BJW Printers, Beckley, W. Va.
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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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

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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.

(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

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<td>Deborah F. Phillips (D)</td>
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<td>W. E. &quot;Bill&quot; Anderson (D)</td>
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<td>Robert L. Mullett (D)</td>
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<td>Ernest C. Moore (D)</td>
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<td>Clayton W. Hale (D)</td>
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<td>Ray Woolsey (D)</td>
<td>Pineville</td>
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</table>

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
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
John R. Hoblitzeil (R) Charleston
James F. Humphreys (D) Charleston
Thomas A. Knight (D) Charleston
Charlotte J. Pritt (D) Charleston
F. Lyle Sattes (D) Charleston
Rudy Sacrist (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. Shanhoiltz (R) Springfield

Thirty-seventh
Patrick H. Murphy (D) Martinsburg

Thirty-eighth
Larry V. Faircloth (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) Republicans .................................................. 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.
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 mentioned shall be deemed a lawful fence as to any horses, mules, asses, jennets, cattle, sheep, swine, or goats, which could not creep through the same, that is to say:

2 (a) If built of common rails, known as the worm fence, four and one-half feet high;

3 (b) If built with posts and rails, or posts and plank, or pickets, four feet high;

4 (c) If built with stone, two feet wide at base, and three and one-half feet high:
(d) If a hedge fence, four feet high. If any hedge fence be built upon a mound, the same from the bottom of the ditch shall be included in estimating the height of such fence;

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

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

(g) If built with posts and high tensile galvanized wire and electrified, thirty-eight inches high and shall consist of not less than five strands, the first strand five inches, the second strand ten inches, the third strand seventeen inches, the fourth strand twenty-seven inches, and the fifth strand thirty-eight inches from the ground. The wire shall be maintained at no less than a two-hundred pound tension at all times. The space between posts shall, in no case, be greater than one hundred fifty feet, provided that pressure-treated one and one-quarter inch by one and one-half inch slotted hardwood or one and one-half inch by two inch softwood battens are used between posts at a distance no greater than thirty-five feet: Provided, That if said fence is constructed to confine only horses, mules, asses, jennets, or...
cattle, it shall be deemed a legal fence if it is not less than
three strands, the first strand seventeen inches, the second
strand twenty-seven inches and the third strand thirty-
eight inches from the ground. The space between posts
shall, in no case, be greater than one hundred fifty feet,
provided that pressure-treated one and one-fourth inch by
one and one-half inch slotted hardwood or one and one-half
inch by two inch softwood battens are used between posts at
a distance no greater than thirty-five feet. Only high-
powered low impedance fence controllers which comply
with international safety standards shall be used to
electrify fence.

All fences heretofore built under the existing law and in
compliance therewith shall be and remain and may be kept
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 or worrying any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry out of the enclosure of the owner of the dog, the owner or keeper of the dog shall be liable for the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry in the amount of the damages sustained, to be recovered in an action before any court or magistrate having jurisdiction of the action.

2 It shall not be necessary to sustain the action to prove that the owner of the dog knew the dog was accustomed to worrying, killing or wounding. A recovery under this section shall bar and preclude the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry from obtaining compensation from the county commission under the provisions of this article. If the person suffering the loss or damage cannot ascertain the owner or keeper of the dog, or if the owner or keeper is not financially responsible, then the person suffering the loss or damage may file his claim with and prove the same before the county commission of the county in which the loss or damage is sustained, in the manner provided in this article, and the commission shall pay the loss or damage out of the fund provided for such purposes and according to the provisions of this article. When compensation is so obtained from the county commission, the county commission is authorized to sue under this section and recover as the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry. The amount so recovered shall be paid into the county treasury; but no suit shall be commenced unless authorized by the county commission.
§19-20-15. Same—Assessment of damages; appraisers.

Authority is hereby given to magistrates and notaries public within this state, and within their respective jurisdictions, to summon three substantial, upright and worthy bona fide residents, citizens and taxpayers of his county to assess the damages suffered by any person on account of the destruction, loss or injury of any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry by dogs within the county. The appraisers shall be appointed upon the request of a person suffering damages on account of such destruction, loss or injury. The appraisers shall go upon the ground and investigate fully the extent of the destruction, loss or injury, taking all the evidence deemed necessary to arrive at the facts to be passed upon in arriving at the amount of damage, if any, suffered by the party making the complaint. Before the appraisers may be summoned by the magistrate or notary public, the complainant shall be required to make a sworn complaint before the magistrate or notary public, setting out in plain, easily comprehensible terms the facts concerning his damages to the best of his knowledge. After making a full investigation of the facts involved, the appraisers, with the assistance of the magistrate or notary public, shall make a sworn statement and report the facts ascertained and the damages suffered. The report and statement shall be filed with the county commission or the clerk thereof in vacation. The fees and mileage for services allowed in such cases shall be the same as are allowed magistrates, witnesses and arbitrators in magistrates' courts in this state for similar services. In the event that the appraisers find that the complainant has suffered no damage, then the complainant shall be responsible for and pay all the costs and expenses of the proceeding. In the event that the complainant has suffered damages on account of the destruction, loss or injury of his domestic animals, according to the finding of the appraisers, the owner, keeper or person permitting the dog, or dogs, causing the damage to remain upon the premises under his control shall be liable for all damages sustained by the complainant, including all costs and necessary expenses.
All of the damages shall be collectible by an action at law before any court or magistrate having jurisdiction of the matter. All papers in connection with any claim shall be filed and preserved in the office of the clerk of the county commission.

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

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

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

1 A person who shall harbor or secrete or aid in secreting a dog which he knows or has reasons to believe has worried, chased or killed any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry not the property of the owner of the dog, out of his enclosure, or knowingly permits the same to be done on any premises under his control, is guilty of a misdemeanor, and, upon conviction thereof, before any court or magistrate having jurisdiction thereof in the county in which the offense is committed, shall be fined not less than ten dollars nor more than fifty dollars, and, at the discretion of the court or magistrate, imprisoned in the county jail not more than thirty days. Each day that the dog is harbored, kept or 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, wounding, chasing or killing any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry not the property of the owner or keeper, out of his enclosure, shall, within forty-eight hours, after having received notice thereof in writing
from a reliable and trustworthy source, under oath, kill
the dog or direct that the dog be killed. If the owner
or keeper refuses to kill the dog as hereinbefore
provided, the magistrate, upon information, shall
summon the owner or keeper of the dog, and, after
receiving satisfactory proof that this dog did the
mischief, shall issue a warrant on application being
made by the owner of the sheep, lambs, goats, kids,
calves, cattle, swine, show or breeding rabbits, horses,
or colts, or poultry killed; and give it into the hands of
the sheriff, who shall kill the dog forthwith or dispose
of by other available methods. The cost of the proceed-
ings shall be paid by the owner or keeper of the dog so
killed, including a fee of fifty cents to the officer killing
the dog. The owner or keeper of the dog so killed shall,
in addition to the costs, be liable to the owner of the
sheep, lambs, goats, kids, calves, cattle, swine, show or
breeding rabbits, horses, colts, or poultry or to the
county commission for the value of the sheep, lambs,
 goats, kids, calves, cattle, swine, show or breeding
rabbits, horses, colts, or poultry so killed or injured.

CHAPTER 3
(Com. Sub. for H. B. 1034—By Delegate Love)

[Passed February 17, 1936; 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, empower county dog wardens and deputy dog wardens to 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.

§19-25-1. Purpose.

1 The purpose of this article is to encourage owners of land to make available to the public land and water areas for recreational or wildlife propagation purposes by limiting their liability toward persons entering
thereon and toward persons who may be injured or
otherwise damaged by the acts or omissions of persons
entering thereon.

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

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

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

Unless otherwise agreed in writing, an owner of land
leased to the state or any agency thereof, or any county
or municipality or agency thereof, for recreational or
wildlife propagation purposes owes no duty of care to
keep that land safe for entry or use by others or to give
warning to persons entering or going upon such land of
any dangerous or hazardous conditions, uses, structures
or activities thereon. An owner who leases land to the
state or any agency thereof, or any county or munici-
pality or agency thereof, for recreational or wildlife
propagation purposes shall not by giving such lease (a)
extend any assurance to any person using the land that
the premises are safe for any purpose, or (b) confer upon
such persons the legal status of an invitee or licensee to
whom a duty of care is owed, or (c) assume responsibility
for or incur liability for any injury to person or property
caused by an act or omission of a person who enters upon
the leased land. The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser or otherwise.

§19-25-4. Application of article.

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

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

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


For purposes of this article: (a) The term "land" shall include, but not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty; (b) the term "owner" shall include, but not be limited to, tenant, lessee, occupant or person in control of the premises; (c) the term "recreational purposes" shall include, but not be limited to, any one or any combination of the following: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites, or otherwise using land for purposes of the user; (d) the term "wildlife propagation purposes" shall apply to and include all ponds, sediment control structures, permanent water impoundments, or any other similar or like structure created or constructed as a result of or in connection with surface
mining activities, as governed by article six, chapter twenty of this code, or from the use of surface in the conduct of underground coal mining as governed by articles one and two, chapter twenty-two of this code, and regulations promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the department of natural resources and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life, and finds and determines that such premises has the potential of being actually used by such wildlife for such purposes and that such premises are no longer used or necessary for mining reclamation purposes. Such certification shall be in form satisfactory to the director and shall provide that such designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and (e) the term “charge” shall mean the amount of money asked in 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.
(a) The division on alcoholism, heretofore established in the department of health, shall continue and be known as the division on alcoholism and drug abuse.

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

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

(3) Neither the department of health nor the division on alcoholism and drug abuse shall be required to accept any alcoholic or drug abuser voluntarily seeking hospitalization for clinical or hospital care, treatment or rehabilitation; but the department may accept, pursuant to its adopted and promulgated rules and regulations, responsibility for clinical or hospital care, treatment or rehabilitation of any alcoholic or drug abuser through arrangements made voluntarily with the department by him or some person acting in his behalf: Provided, That any such person accepted by the department on a voluntary basis shall be charged a minimum fee unless he shows, to the satisfaction of the department, that he is unable to pay the fee: Provided, however, That the department shall accept all alcoholics and drug abusers
committed by a mental hygiene commissioner or judicial
officer in accordance with the procedures established by
article six-a of this chapter: Provided further, That
notwithstanding any provision in article five of this
chapter which may be to the contrary, the supervisor of
the division on alcoholism and drug abuse may specify
the clinic or hospital to which the alcoholic or drug
abuser shall be committed after a final commitment
hearing provided in section four, article five of this
chapter.

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

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

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

(C) The department shall provide at least two compre-
hensive outpatient programs for youth whose drug or
alcohol problems make them a candidate for such
programs as determined by qualified mental health
professionals. At least one program shall serve a rural
area. These programs shall include, at minimum:
Educational lectures; co-dependency, peer group,
individual and family counseling; services for at risk
population; and relapse, prevention and after care
programs. One such program shall be established by the
first day of January, one thousand nine hundred eighty-seven, and a second program by the first day of July, one thousand nine hundred eighty-seven.

(6) The department may employ such medical, psychiatric, psychological, secretarial and other assistance as may be necessary to carry out the provisions of this section.

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

(1) “Alcoholic” means a person who suffers from alcoholism as defined in subdivision (2) of this subsection.

(2) “Alcoholism” means a disease or illness characterized by psychological or physiological addiction to alcoholic beverages as manifested by: (A) The inability to control one’s consumption of alcoholic beverages except through total abstinence, or (B) the inability to control one’s behavior when consuming alcoholic beverages, or (C) both.

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

(4) “Alcohol abuse” means the periodic, frequent or constant consumption of alcoholic beverages to the extent that one’s health is substantially impaired or endangered or one’s social or economic functioning is substantially disrupted.

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

(6) “Drug abuse” means the use of any controlled substance as that term is defined in said chapter sixty-a, until such time as the user has become dependent upon or addicted to the same.
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.
2. Sales by Commissioner.
3. Licenses.
4. Licenses to Private Clubs.
5. 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 mandate of the people expressed in the repeal of the state prohibition amendment; and it is hereby found by the Legislature and declared to be the public policy of this state to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of alcoholic liquors and at the same time to assure the greatest degree of personal freedom consistent with the health, safety, welfare, peace and good morals of the people of this state.

To these ends the police power of this state is pledged to the sound control and the temperate use of alcoholic liquors. In order to further promote and foster the hereinabove policy of the Legislature, the provisions of this chapter and of the rules and regulations promulgated pursuant thereto shall be construed so as to accomplish and effectuate these stated purposes.

§60-1-5. Definitions.

1. For the purposes of this chapter:
"Alcohol" shall mean ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Public place” shall mean any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park or place of public resort or amusement. 

Provided, That the term “public place” shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of this chapter to sell alcoholic liquors for consumption on the premises.

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

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

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

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

“Intoxicated” shall mean having one’s faculties impaired by alcohol or other drugs to the point where physical or 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 defined by any of the provisions of chapter sixty-a of this 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, for the purpose of purchasing alcoholic liquors from a state liquor store or an agency, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase alcoholic liquors from a state liquor store or an agency, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

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

(a) It shall be unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any alcoholic liquors, for or to any person less than twenty-one years of age;

(4) Sell, give away, or permit the sale of, gift to, or the procurement of any alcoholic liquors, for or to any mental incompetent, or for a person who is physically incapacitated due to consumption of alcoholic liquor or the use of drugs;

(5) Sell, give or dispense alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m. on any Sunday;

(6) Permit the consumption by, or serve to, on the licensed premises any alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;

(9) Permit any person who is less than eighteen years of age to sell, furnish or give alcoholic liquors to any person; or

(10) Violate any reasonable rule or regulation of the commissioner.
37 (b) It shall further be unlawful for any licensee to advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.
38 (c) Any person who violates any of the foregoing provisions shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period 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, for the purpose of purchasing nonintoxicating beer or alcoholic liquors from a licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase nonintoxicating beer or alcoholic liquors from a licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.
2 (b) Any person who shall knowingly buy for, give to or furnish to anyone under the age of twenty-one to whom they are not related by blood or marriage, any nonintoxicating beer or alcoholic liquors purchased from a licensee, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or shall be imprisoned in the county jail for a period not to 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 different meaning, as used in this article:
2 "Commissioner" or "commission" means the West Virginia alcohol beverage control commissioner.
3 "Distributor" means any person whose principal place of business is within the state of West Virginia, and who is engaged in selling or distributing wine to retailers or private wine restaurants and selling or distributing port, sherry and madeira wines to wine specialty shops under authority of this article and actually maintains a warehouse in this state for the distribution of wine.
4 "Fortified wine" shall mean any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified.
5 "Grocery store" means any retail establishment, commonly known as a grocery store, supermarket or delicatessen, where food, food products and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wines) of not less than three thousand dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars. The term "grocery store" shall also include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises with average monthly sales with respect to such separate or segregated portion (exclusive of sales of wine) of not less than three thousand dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars.
6 "Licensee" means the holder of a license granted under the provisions of this article.
7 "Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which has as its principal purpose the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or
as to a separate segregated portion of its premises to serve
wine to its members and their guests when such sale
accompanies the serving of food or meals; and (3) admits
only duly elected and approved dues paying members and
their guests while in the company of a member, and does not
admit the general public.

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

“Supplier” means any manufacturer, producer,
processor, distributor or supplier of wine who sells or offers
to sell or solicits or negotiates the sale of wine to any
licensed West Virginia distributor.

“Tax” includes within its meaning interest, additions to
tax and penalties.

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

“Varietal wine” means any wine labeled according to the
grape variety from which such wine is made.

“Vintage wine” or “vintage-dated wine” means wines
from which the grapes used to produce such wine are
harvested during a particular year or wines produced from
the grapes of a particular harvest in a particular region of
production.

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

“Wine specialty shop” means a retailer who shall deal
principally in the sale of table wine, certain fortified wines,
wine accessories and food or foodstuffs normally associated
with wine and (1) who shall maintain a representative
number of such wines for sale in his inventory which are
designated by label as varietal wine, vintage, generic and/or
according to region of production and the inventory shall
contain not less than fifteen percent vintage or vintage-
dated wine by actual bottle count and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry and madiera wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks.

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

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

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

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

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

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

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

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

(c) The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.
(d) No retailer may be licensed as a private club as provided by article seven of this chapter.

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

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

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

(h) The commissioner may issue a special license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. Such special license shall be issued for a term of no longer than ten consecutive days and the fee therefor shall be two hundred fifty dollars regardless of the term of the license. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words "wine club." The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided for in this subsection until the wine club has at least fifty dues paying members who have been
enrolled and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subsection may sell wine only to its members, and in portions not to exceed eight ounces per serving. Such sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to such premises or area. A licensee under the provisions of this subsection shall be authorized to serve complimentary samples of wine in moderate quantities for tasting.

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

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

(i) A license to sell wine granted to a private wine restaurant under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article. Such licensees are authorized to keep and maintain on their premises a supply of wine in such quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article. A private wine restaurant
Ch. 6] ALCOHOLIC LIQUORS

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

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

§60-8-20. Unlawful acts generally.

It shall be unlawful:

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

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

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

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

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

Provided, however, That nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this state wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale, of which brand or brands such other distributor may be temporarily out of stock. The commissioner shall promulgate such rules or regulations as may be necessary to carry this subsection into effect;

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

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

§60-8-20a. Unlawful acts by persons.

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

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

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

(a) The commissioner is hereby authorized:

(1) To enforce the provisions of this article.

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

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

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

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

(C) Restricting the content of wine advertising so as to prohibit false or misleading claims, or depictions or descriptions of wine being consumed irresponsibly or immoderately, or advertising presentations designed to appeal to persons below the legal drinking age: Provided, That the commissioner shall not promulgate any rule or
regulation which prohibits the advertising of a particular brand or brands of wine and the price thereof: Provided, however, That price shall not be advertised in a medium of electronic communication subject to the jurisdiction of the federal communications commission.

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

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

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

(d) All rules and regulations promulgated by the commissioner pursuant to this article shall be so promulgated in accordance with the provisions of chapter twenty-nine-a of this code. The rules and regulations promulgated pursuant to the prior enactment of this article and not disapproved by the Legislature shall remain in full force and effect to the extent that such rules and regulations are not abrogated and made null and void by the reenactment of sections of this article during the regular session of the Legislature for the year one thousand nine hundred eighty-six. Any rule or regulation which is inconsistent or contrary in any way to any provision of 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
company registered as a supplier shall furnish at the time of application a bond with a corporate surety authorized to transact business in this state, payable to the state, and conditioned on the payment of all taxes and fees herein prescribed and on the faithful performance of and compliance with the provisions of this article.

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

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

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

CHAPTER 7

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

[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 patient is a suitable candidate for organ or tissue donation, the person in charge of a hospital, or his or her designated representative other than a person connected with the determination of death, shall at the time of death request persons listed in this section for consent to an anatomical gift. In the order of priority stated and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, any of the following persons may give all or any part of the 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 time of his death.

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

(b) Where a donation is requested, the person in charge of a hospital or his designated representative shall complete a certificate of request for an anatomical
gift, on a form supplied by the hospital. Said certificate shall include a statement to the effect that a request for consent to an anatomical gift has been made, and shall further indicate thereupon whether or not consent was granted, the name of the person granting or refusing the consent, and his or her relationship to the decedent. Upon completion of the certificate, said person shall attach the certificate of request for an anatomical gift to the death certificate.

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

(d) The director of health shall establish regulations concerning the training of hospital employees who may be designated to perform the request, and the procedures to be employed in making it.

(e) The director of health shall establish such additional regulations as are necessary for the implementation of this section.

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

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

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer for valuable consideration any human organ for use in human transplantation. The term human organ means the human kidney, liver, heart, lung, bone marrow, and any other human organ or tissue as may be designated by the director of health but shall exclude blood. The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, lost wages incurred by the donor of a human organ in connection with the donation of the organ, or expenses incurred by nonprofit agencies or corporations
to recover expenses incurred while offering services related to the location, maintenance and distribution of said human organs. Any person who violates this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars.

CHAPTER 8

(H. B. 1440—By Delegate Jordan and Delegate Shan Holtz)

[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.
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 EDUCA TIONAL

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

The purpose of this supplemental appropriation bill is to appropriate state general revenue funds in the amount of $807,894 for the Basic Foundation Program for state schools to meet an additional cost requirement by 1985 legislation under Code §18A-4-5. Such increased amounts shall be available for expenditure upon the effective date of this bill.
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—Department of Human Services
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
is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1985-86. Such amount shall be available for expenditure upon the effective 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
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1985-86. Such amount shall be available for expenditure upon the effective date of this bill.

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

<table>
<thead>
<tr>
<th>Fiscal Year 1985-1986</th>
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<tbody>
<tr>
<td>Item</td>
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<tr>
<td>1 Maintenance Expressway</td>
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<tr>
<td>2 Trunkline and Feeder</td>
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<tr>
<td>3 Maintenance, State Local Service</td>
</tr>
<tr>
<td>4 Maintenance, Contract Paving and Secondary Road Maintenance</td>
</tr>
<tr>
<td>5 Toll Road Examination</td>
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<tr>
<td>6 Equipment Revolving</td>
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<tr>
<td>7 General Operations</td>
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<tr>
<td>8 Annual Increment</td>
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<tr>
<td>9 Debt Service</td>
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<tr>
<td>10 Interstate Construction</td>
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<tr>
<td>11 Other Federal Aid Programs</td>
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<tr>
<td>12 Appalachian Program</td>
</tr>
<tr>
<td>13 Nonfederal Aid Construction</td>
</tr>
<tr>
<td>14 Total</td>
</tr>
<tr>
<td>15 *Includes salary of Commissioner at $47,500 per annum.</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement existing items in the aforesaid account for expenditure in the fiscal year of 1985-1986, and to
reflect the new total spending authority of the spending unit for such fiscal year. Such increased amounts shall be available for expenditure upon the effective date of 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.
109—State Health Department—Hospital Services  
Revenue Account (Special Fund)  
(Capital Improvement, Renovation and Operation)  
Acct. No. 8500  
TO BE PAID FROM SPECIAL REVENUE FUND  

<table>
<thead>
<tr>
<th>State Revenue</th>
<th>General Revenue</th>
<th>Fiscal Year</th>
<th>1985-1986</th>
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<tbody>
<tr>
<td>64a Behavioral Health Service—</td>
<td>64b operating funds for Group</td>
<td>64c Homes, Day Care and Medley</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>65 Total</td>
<td>$11,839,500</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation balances at the close of the fiscal year 1985-86, is hereby reappropriated for expenditure during fiscal year 1986-87.

The purpose of this supplementary appropriation bill is to supplement this account with the above new line item and amount in the budget bill for the current fiscal year of 1985-86, thus increasing the total of projects in 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
employer retirement contribution payments, usually transferred and made by the department to the West Virginia Public Employees Retirement Board as an employer's share of retirement costs, with such moneys to be used for road contract paving purposes during the 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.

EXECUTIVE

18—State Tax Department

Acct. No. 1800

1 Personal Services ...................... $ 9,415,604
2 Current Expenses ....................... 6,473,902
3 Total .................................. $17,245,592

The purpose of this supplementary appropriation bill is to supplement, amend and transfer the sum of $273,000 from item one, "Personal Services" of the
existing appropriation to item three, "Current Expenses" of such appropriation in this account for the State Tax Department; with no new moneys being appropriated hereby, and with such amounts as newly itemized being available for expenditure during the current fiscal year 1985-86 and upon the effective date 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
The purpose of this supplementary appropriation bill is to supplement, amend and transfer the sum of $100,000 from the subitem designated “Personal Services,” of the line item designated “Agricultural and Forestry Experiment Station-W.V.U.”; with $35,000 thereof going to the subitem designated “Current Expenses,” and with $65,000 thereof going to the newly created subitem designated “Equipment,” and with no new moneys being hereby appropriated, but merely a transfer of present appropriation being made. The $35,000 for the subitem designated “Current Expenses” will be used to help pay for fringe benefits, and the $65,000 for the newly created subitem designated “Equipment” will be used to purchase research and farm equipment. The amounts, as newly itemized, shall be available for expenditure during the current fiscal 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-
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.

EDUCATIONAL

35—Department of Education

(WV Code Chapters 18 and 18A)

Account No. 2950

1 Professional Educators $461,659,381
2 Service Personnel 163,150,300
5 Administrative Cost 4,342,635
8 Total Basic Foundation Program 792,611,604
10 Total Basic State Aid 688,963,417
12 Staffing Improvement 1,447,123
13 Professional Educators (688,860)

14 Total $693,309,983
15 The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation to another item of such appropriation for the designated spending unit, with no new moneys being appropriated hereby.
16 The amounts as newly itemized for expenditure during such fiscal year shall be available for expenditure upon 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 44—Department of Corrections-Central Office
5 Acct. No. 3680
6
7 State
8 General
9 Revenue
10 Fiscal Year
11 1985-1986
12 6 Adult Female
13 7 Offenders Contract ................. $ 745,901
14 8 Current Expenses ................. (723,742)
15 8 Total ................................ $ 1,537,141
16 46—Department of Corrections-Correctional Units
17 Acct. No. 3770
18 1 Personal Services ..................... $11,614,665
19 3 Current Expenses ..................... 6,748,394
20 4 Repairs and Alterations ............ (5,161,507)
21 9 Total ................................ $21,973,830
The purpose of this supplementary appropriation bill is to supplement, amend and transfer the sum of two hundred thousand dollars, state general revenues, heretofore appropriated to item seven, "Adult Female Offenders Contract" item and the "Current Expenses" subitem thereof in Account No. 3680, and from this Central Office account to the Correctional Units Account No. 3770 of the Department of Corrections wherein the "Personal Services" item is increased by $50,000; the "Current Expenses" item and subitem "Other" thereof is increased by $50,000; and the "Repairs and Alterations" item is increased by $100,000; and with no new moneys being appropriated hereby. These amounts, as newly itemized, shall be available for expenditure during the current fiscal year of 1985-86 and upon the effective date of this bill.

CHAPTER 19
(H. B. 1929—By Delegate Seacrist and Delegate Davis)

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:
TITLE 2. APPROPRIATIONS.

Section 2. Appropriations of federal funds.

BUSINESS AND INDUSTRIAL RELATIONS

61—West Virginia Air Pollution Control Commission

Acct. No. 4760

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>Fiscal Year 1985-1986</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services</td>
<td>$ 744,661</td>
</tr>
<tr>
<td>4  Equipment</td>
<td>51,500</td>
</tr>
</tbody>
</table>

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

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

CONSERVATION AND DEVELOPMENT
3 77—West Virginia Railroad Maintenance Authority

Acct. No. 5690

<table>
<thead>
<tr>
<th>State General Revenue Fiscal Year 1985-1986</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Current Expenses</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
</tr>
</tbody>
</table>

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

CHAPTER 22
(H. B. 2000—By Delegate Farley)

[Passed February 26, 1986; in effect from passage. Approved by the Governor.]
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 appropriation and direction, the board shall transfer and
8 19 cause to expire into the state fund, general revenue
9 20 of the state, those employer contribution moneys
10 21
remaining in item one, above, of this account and applicable to departments and spending units operating from the general revenue fund, and the board shall also transfer and cause to so expire the employer contribution moneys received after such effective date and applicable to the remainder of fiscal year 1985-86, from those departments operating from special revenue funds except the state department of highways.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce, transfer and cause to expire into the state fund, general revenue of the state, the remaining employer contribution moneys applicable to payrolls issuing subsequent to the effective date of this bill and for the remainder of the current fiscal year 1985-86 of departments and spending units both operating from general revenues contained in item one of this account and operating from special revenues, with the board to receive the latter employer contribution moneys subsequently and during the remainder of the current fiscal year 1985-86; with both types of employer contribution moneys to be so transferred and expired by the board, except the state department of 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. 7929-081; 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. 8157-071; of the Department of Agriculture-Indirect Cost Funds, Account No. 8185-101; of the Department of Agriculture-Rural Resources, Account No. 8190-131; of the Department of Agriculture-Investment Account, Account No. 8194-161; of the Department of Agriculture, Soil Conservation Committee-Operation Account, Account No. 8195-061; of the Department of Agriculture-Small Watershed Program, Account No. 8195-091; of the Department of Corrections-Prison Industries, Account No. 8222-051; of the Regional Jail Authority, Account No. 8225-751; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-201; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-211; of the State Department of Education-Textbook Adoption, Account No. 8240-461; of the State Department of Education-FFA-FHA Camp and Conference Center-Room and Board, Account No. 8245-071; of State Department of Education-FFA-FHA Camp and Conference Center-Crafts Program, Account No. 8245-081; of the State Department of Education-Cedar Lakes, Account No. 8245-121; of the Department of Employment Security-Interest on Employers Delinquent Contributions, Account No. 8250-081; of the Department of Veterans Affairs-Veterans Home Improvement, Account No. 8260-111; of the Department of Veterans Affairs-Resident Maintenance Collection, Account No. 8260-131; of the Public Employees Insurance Board-Basic Insurance Premium, Account No. 8265-051; of the Public Employees Insurance Board-Administration Expense, Account No. 8265-061; of the Public Employees Insurance Board-Optional Life Insurance Premiums, Account No. 8265-071; of the State Board of Insurance-Premiums and Self Insured Losses, Account No. 8275-061; of the State Board of Insurance-Professional Liability Trust Fund, Account No. 8275-071; of the State Board of Insurance-Mine Subsidence Insurance Fund, Account No. 8275-081; of the Public Service Commission-Special Revenue Administration, Account No. 8280-081; 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-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 WSWEP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-16I; of WSWEP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-20I; of WSWEP-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. 8598-241; of WNPB-TV-C.P.B.-B, Account No. 8598-281; of the Department of Human Services-Child Abuse, Account No. 9155-361; of the Economic and Community Development-Industrial Development Loan Fund, Account No. 9290-151; of the Economic and Community Development-E.D.A.-Title IX Loan Fund, Account No. 9290-201; of the State Building Commission-Parking Lot Operating, Account No. 9500-081; of the State Building Commission-Operating Expense Capitol Complex, Account No. 9500-091; of the State Building Commission-Cafeteria Operating Account, Account No. 9500-121; of the State Building Commission-Bond Forfeiture, Account No. 9500-151; 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.
7929-081 -$854.76; 8000-121 -$100,980.70; 8004-111 -$233.73;
8010-221 -$81,079.14; 8026-221 -$8,368.07; 8026-231 -$249.54;
8026-241 -$22,038.13; 8026-251 -$2,330.96; 8046-101 -$2,257.41;
8050-061 -$9,422.26; 8079-061 -$2,770.38; 8090-061 -$11,993.17;
8090-071 -$9,864.27; 8090-081 -$10,052.22; 8096-061 -$59,990.76;
8100-051 -$35.73; 8120-151 -$0.97; 8103-201 -$560.30; 8105-301
-$24,504.13; 8106-351 -$10,296.75; 8110-551 -$19,961.54; 8130-
051 -$1,469.89; 8131-101 -$602.15; 8140-081 -$577.11; 8145-451
-$12,384.44; 8152-071 -$1,308.34; 8157-071 -$46,594.85; 8185-101
-$20,242.02; 8190-131 -$77,227.09; 8194-161 -$1,533.13; 8195-061
-$79,337.80; 8195-091 -$54,932.61; 8222-051 -$13,942.99; 8225-
751 -$74.76; 8240-201 -$2,754.05; 8240-211 -$2,020.65; 8240-461
-$3,137.07; 8245-071 -$16,613.12; 8245-081 -$1,273.72; 8245-121
-$792.71; 8250-081 -$88,419.96; 8260-111 -$105,787.84; 8260-131
-$35,702.14; 8265-051 -$1,390,205.92; 8265-061 -$76,502.73;
8265-071 -$94,873.18; 8275-061 -$129,431.90; 8275-071 -$139,946.31;
8275-081 -$113,736.66; 8280-081 -$171,766.33; 8285-081 -$46,507.25;
8290-081 -$107,937.93; 8320-111 -$6,531.42; 8325-091 -$1,821,576.30;
8344-061 -$17,599.94; 8350-121 -$8,269.64; 8351-291 -$406.06; 8352-121
-$11,871.16; 8355-101 -$68,552.36; 8392-061 -$9,361.52; 8395-081
-$47,545.43; 8436-061 -$83.05; 8500-301 -$1,771,629.53; 8554-061
-$25,111.58; 8590-101 -$6,306.36; 8595-041 -$1,648.35; 8595-081
-$813.11; 8595-251 -$4,379.74; 8596-061 -$1,853.08; 8596-161
-$2,173.04; 8596-201 -$18,568.53; 8596-261 -$811.61; 8597-091
-$13,573.63; 8597-101 -$2,493.06; 8597-111 -$8,737.82; 8597-141
-$1,330.54; 8597-171 -$2,163.69; 8597-271 -$1,736.82; 8598-231
-$4,370.33; 8598-241 -$1,525.82; 8598-281 -$2,786.77; 9155-361
-$4,858.63; 9290-151 -$696,223.07; 9290-201 -$36,812.38; 9500-081
-$107,742.05; 9500-091 -$293,123.63; 9500-121 -$21,235.30; and
9500-151 -$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
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 to supplement, amend, reduce and cause to expire out of the Governor's Office—Civil Contingent Fund, Account No. 1240-20, available for expenses related to the Southern West Virginia Flood Relief, and into the state fund, general revenue of the state, the sum of eight hundred 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 to supplement, amend, reduce and cause to expire out of the Management Service Fee account of the Treasurer's Office, and into the state fund, general revenue of the state, the sum of five hundred thousand dollars of the money balances in such account in order to make such sum available for other and further appropriation and expenditure in the current fiscal year 1985-86 and upon 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 design­
nated, 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 Legis­
lature, 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 cur­
rent 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 supple­
mented, amended, reduced and caused to expire from such
designated account and back into the state fund, general rev­
enue 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.
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. 8140-081; of the Department of Finance and Administration-State Agency for Surplus Property, Account No. 8145-451; of the Department of Finance and Administration-Information Systems Services Division, Account No. 8152-071; of the Department of Finance and Administration-Transportation Division, Account No. 8157-071; of the Department of Agriculture-Indirect Cost Funds, Account No. 8185-101; of the Department of Agriculture-Rural Resources, Account No. 8190-131; of the Department of Agriculture-Investment Account, Account No. 8194-161; of the Department of Agriculture, Soil Conservation Committee-Operation Account, Account No. 8195-061; of the Department of Agriculture-Small Watershed Program, Account No. 8195-091; of the Department of Corrections-Prison Industries, Account No. 8222-051; of the Regional Jail Authority, Account No. 8225-751; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-201; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-21; of the State Department of Education-Textbook Adoption, Account No. 8240-461; of the State Department of Education-FFA-FHA Camp and Conference Center-Room and Board, Account No. 8245-071; of the State Department of Education-FFA-FHA Camp and Conference Center-Crafts Program, Account No. 8245-081; of the State Department of Education-Cedar Lakes, Account No. 8245-121; of the Department of Employment Security-Interest on Employers Delinquent Contributions, Account No. 8250-081; of the Department of Veterans Affairs-Veterans Home Improvement, Account No. 8260-111; of the Department of Veterans Affairs-Resident Maintenance Collection, Account No. 8260-131; of the Public Employees Insurance Board-Basic Insurance Premium, Account No. 8265-051; of the Public Employees Insurance Board-Administration Expense, Account No. 8265-061; of the Public Employees Insurance Board-Optional Life Insurance Premiums, Account No. 8265-071; of the State Board of Insurance Premiums and Self Insured Losses, Account No. 8275-061; of the State Board of Insurance-
Professional Liability Trust Fund, Account No. 8275-071; of the State Board of Insurance-Mine Subsidence Insurance Fund, Account No. 8275-081; of the Public Service Commission-Special Revenue Administration, Account No. 8280-081; of the Public Service Commission-Gas Pipeline Division, Account No. 8285-081; of the Public Service Commission-Motor Carrier Division, Account No. 8290-081; of the Department of Natural Resources-Watter Smith State Park, Account No. 8320-111; of the Department of Natural Resources-Investments, Account No. 8325-091; of the Railroad Maintenance Authority-South Branch Valley Railroad, Account No. 8344-061; of the Department of Public Safety-Purchase of Investments, Account No. 8350-121; of the Department of Public Safety-Criminal Investigation, Account No. 8351-291; of the Department of Public Safety-Purchase of Investments, Account No. 8352-121; of the Department of Public Safety-Drunk Driving Prevention, Account No. 8355-101; of the Department of Banking-Revolving Account, Account No. 8392-061; of the Department of Banking-Purchase of Investments, Account No. 8395-081; of the Secretary of State-Filing Fees, Account No. 8436-061; of the State Health Department-Investments, Account No. 8500-301; of the Blennerhassett Historical Park, Account No. 8554-061; of the West Virginia Geological Survey-Publication Sales, Account No. 8590-101; of WPBY-TV-Operating Account, Account No. 8595-051; of the WPBY-TV-Grants-Even Fund Years, Account No. 8595-081; of the WPBY-TV-Capital Expenditure, Account No. 8595-251; of Grandview Educational TV-Operating Expense, Account No. 8596-061; of the WSWP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-161; of WSWP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-201; of WSWP-TV-Capital Outlay, Account No. 8596-261; of Educational Broadcasting Authority-Statewide Service, Account No. 8597-091; of Educational Broadcasting Authority-Radio Network, Account No. 8597-101; of Educational Broadcasting Authority-Radio Network, Account No. 8597-111; of Educational Broadcasting Authority-WV Public Radio, Account No. 8597-141; of Educational Broadcasting

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. 7929-081; of the Treasurer's Office-Abandoned and Unclaimed Property, Account No. 8000-121; of the Treasurer's Office-Investment Pool, Account No. 8004-111; of the Real Estate Commission, Account No. 8010-221; of the Office of Economic and Community Development, Domestic Violence-Operations, Account No. 8026-221; of the Office of Economic and Community Development, Domestic Violence-Administration, Account No. 8026-231; of the Office of Economic and Community Development, Law-Enforcement Training-Operations, Account No. 8026-241; of the Office of Economic and Community Development, Law-Enforcement Training-Administration, Account No. 8026-251; of the Office of Economic and Community Development-Oil Overcharge Refunds, Account No. 8046-101; of the Regional Jail and Prison Authority, Account No. 8050-061; of the West Virginia Board of Examiners of Radiologic Technology, Account No. 8079-061; of the State Tax Department-Chief Inspector, Account No. 8090-061; of the State Tax Department-Federal Reimbursement, Account No. 8090-071; of the State Tax Department-County Tax Fund, Account No. 8090-081; of the Oil and Gas Conservation Commission-Annual Lease Tax, Account No. 8096-061; of the West Virginia Board of Accountancy, Account No. 8100-061; of the West Virginia Board of Dental Examiners, Account No. 8102-151; of the West Virginia Board of Land Surveyors, Account No. 8103-201; of the West Virginia Board of Pharmacy, Account No. 8105-301; of the West Virginia Board of Examiners of Practical Nurses, Account No. 8106-351; of the West Virginia Board of Registered Nurses, Account No. 8110-551; of the West Virginia Board of Chiropractic Examiners, Account No. 8130-051; of the West Virginia Board of Embalmers and Funeral Directors, Account No. 8131-101; of the Department of Finance and Administration-Revolving Fund, Account No. 8140-081; of the Department of Finance and Administration-State Agency for Surplus Property, Account No. 8145-451; of the Department of Finance and Administration-Information Systems Services Division, Account No. 8152-071; of the Department of Finance and Administration-Transportation Division, Account No. 8157-071; of the Department of Agriculture-Indirect Cost
Funds, Account No. 8185-101; of the Department of Agriculture-Rural Resources, Account No. 8190-131; of the Department of Agriculture-Investment Account, Account No. 8194-161; of the Department of Agriculture, Soil Conservation Committee-Operation Account, Account No. 8195-061; of the Department of Agriculture-Small Watershed Program, Account No. 8195-091; of the Department of Corrections-Prison Industries, Account No. 8222-051; of the Regional Jail Authority, Account No. 8225-751; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-201; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-211; of the State Department of Education-Textbook Adoption, Account No. 8240-461; of the State Department of Education-FFA-FHA Camp and Conference Center-Room and Board, Account No. 8245-071; of the State Department of Education-FFA-FHA Camp and Conference Center-Crafts Program, Account No. 8245-081; of the State Department of Education-Cedar Lakes, Account No. 8245-121; of the Department of Employment Security-Interest on Employers Delinquent Contributions, Account No. 8250-081; of the Department of Veterans Affairs-Veterans Home Improvement, Account No. 8260-111; of the Department of Veterans Affairs-Resident Maintenance Collection, Account No. 8260-131; of the Public Employees Insurance Board-Basic Insurance Premium, Account No. 8265-051; of the Public Employees Insurance Board-Administration Expense, Account No. 8265-061; of the Public Employees Insurance Board-Optional Life Insurance Premiums, Account No. 8265-071; of the State Board of Insurance-Premiums and Self Insured Losses, Account No. 8275-061; of the State Board of Insurance-Professional Liability Trust Fund, Account No. 8275-071; of the State Board of Insurance-Mine Subsidence Insurance Fund, Account No. 8275-081; of the Public Service Commission-Special Revenue Administration, Account No. 8280-081; of the Public Service Commission-Gas Pipeline Division, Account No. 8285-081; of the Public Service Commission-Motor Carrier Division, Account No. 8290-081; of the Department of Natural Resources-Watter Smith State Park, Account No. 8320-111; of the Department of Natural Resources-Investments, Account No. 8325-091; of the Railroad Maintenance Authority-South Branch Valley Railroad, Account No. 8344-061; 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.
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.—The purpose of this act is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year one thousand nine hundred eighty-seven.

Sec. 2. Definitions.—For the purpose of this act:

"Governor" shall mean the governor of the state of West Virginia.

"Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended.

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

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

"From collections" shall mean that part of the total...
appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collection. If the amount collected exceeds the amount designated "from collections", the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by chapter five-a, article two of the code.

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

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

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

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

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

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

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

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

"Repairs and alterations" shall mean routine mainte-
nance and repairs to structures and minor improve-
ments to property which do not increase the capital
assets.

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

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

"Capital outlay" shall mean and include buildings,
lands, or buildings and lands, with such category or
item of appropriation to remain in effect as provided by
chapter twelve, article three, section twelve of the code:

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

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

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

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

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.
§2. Appropriations of federal funds.

AGRICULTURE
Department of agriculture—Acct. No. 5100
Department of agriculture (agricultural awards)—Acct. No. 5150
### Appropriations

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§3. Appropriations from other funds.

§4. Appropriations of federal funds.

**PAYABLE FROM FEDERAL FUNDS**

Department of education—(veterans education)—Acct. No. 7979

**PAYABLE FROM MEDICAL SCHOOL FUND**

West Virginia University—(medical center)—Acct. No. 9280
§5. Awards for claims against the state.


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<td>Regional jail and prison authority</td>
<td>8050</td>
</tr>
<tr>
<td>State committee of barbers and beauticians</td>
<td>8220</td>
</tr>
<tr>
<td>State health department</td>
<td>8850</td>
</tr>
<tr>
<td>Treasurer's office (abandoned and unclaimed property)</td>
<td>8000</td>
</tr>
<tr>
<td>Treasurer's office (disaster recovery fund)</td>
<td>8007-18</td>
</tr>
<tr>
<td>West Virginia alcohol beverage control commissioner</td>
<td>9270</td>
</tr>
<tr>
<td>West Virginia hospital finance authority</td>
<td>8330</td>
</tr>
<tr>
<td>West Virginia racing commission</td>
<td>8080</td>
</tr>
</tbody>
</table>

PAYABLE FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Department or Agency</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of motor vehicles</td>
<td>6710</td>
</tr>
<tr>
<td>State department of highways</td>
<td>6790</td>
</tr>
</tbody>
</table>

PAYABLE FROM WORKERS' COMPENSATION FUND

<table>
<thead>
<tr>
<th>Department or Agency</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers' compensation commissioner</td>
<td>9000</td>
</tr>
</tbody>
</table>
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§12. Specific funds and collection accounts.


§15. Appropriations to pay costs of publication of delinquent corporations.

§16. Appropriations for local governments.

§17. Total appropriations.

§18. General school fund.

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

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

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

LEGISLATIVE

1—Senate
Acct. No. 1010

<table>
<thead>
<tr>
<th></th>
<th>Federal Fund</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>1986-87</td>
<td>1986-87</td>
<td></td>
</tr>
<tr>
<td>Compensation of Members</td>
<td>$275,000*</td>
<td></td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers and Employees</td>
<td>$992,500</td>
<td></td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>$175,000</td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$50,000</td>
<td></td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>$447,500</td>
<td></td>
</tr>
<tr>
<td>Computer Supplies</td>
<td>$25,000</td>
<td></td>
</tr>
<tr>
<td>Computer Systems</td>
<td>$262,000</td>
<td></td>
</tr>
<tr>
<td>Printing Blue Book</td>
<td>$185,000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$2,412,000</td>
<td></td>
</tr>
</tbody>
</table>

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

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

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

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

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

The clerk of the senate, with written approval of the president, or the president of the senate shall have authority to employ such staff personnel during any session of the legislature as shall be needed in addition to staff personnel authorized by the senate resolution adopted during any such session. The clerk of the senate with written approval of the president or the president of the senate shall have authority to employ such staff personnel between sessions of the legislature as shall be needed, the compensation of all staff personnel during and between sessions of the legislature, notwithstanding any such senate resolution, to be fixed by the president of the senate. The clerk is hereby authorized to draw his requisitions for the payment of all such staff personnel upon the auditor, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the senate for such services.

For duties imposed by law and the senate, the clerk of the senate shall be paid a monthly salary as provided in senate resolution adopted January 1986, and payable out of the amount appropriated for Compensation and
Per Diem of Officers and Employees.

2—House of Delegates

Acct. No. 1020

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members</td>
<td>$650,000*</td>
</tr>
<tr>
<td>Per Diem of Officers and Employees</td>
<td>$346,000</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>$529,000</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>$975,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,500,000</strong></td>
</tr>
</tbody>
</table>

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

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

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

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

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

The speaker of the house of delegates, upon approval of the house committee on rules, shall have authority to employ such staff personnel during and between sessions of the legislature as shall be needed, in addition
to personnel designated in the house resolution, and the
compensation of all personnel shall be as fixed in such
house resolution, for the session, or fixed by the speaker,
with the approval of the house committee on rules,
during and between sessions of the legislature, notwith-
standing such house resolution. The clerk of the house
is hereby authorized to draw requisitions upon the
auditor, payable from the Compensation and Per Diem
of Officers and Employees Fund or the Current Ex-
penses and Contingent Fund of the house of delegates
for such service.

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

3—Joint Expenses

Acct. No. 1030

(WV Code Chapter 4)

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Committee on Government and Finance</td>
<td>$5,270,399</td>
</tr>
<tr>
<td>To Pay Cost of Legislative Printing</td>
<td>$970,000</td>
</tr>
<tr>
<td>Rule Making Review Committee</td>
<td>$114,150</td>
</tr>
<tr>
<td>Commission on Interstate Cooperation</td>
<td>$5,000</td>
</tr>
<tr>
<td>National Conference of State Legislatures</td>
<td>$43,010</td>
</tr>
<tr>
<td>Education Commission of the States</td>
<td>$28,500</td>
</tr>
<tr>
<td>Association of State Auditors, Comptrollers and Treasurers</td>
<td>$1,800</td>
</tr>
</tbody>
</table>
Council of State Governments' Governmental Accounting Standards Board ................................... 10,000

Total ................................ $ ........................... $ 6,442,859

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

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

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$30,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$16,592,040*</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>$2,542,058</td>
</tr>
<tr>
<td>Judges' Retirement</td>
<td>$1,119,048</td>
</tr>
<tr>
<td>System</td>
<td>$2,011,700</td>
</tr>
<tr>
<td>Other Court Costs</td>
<td>$250,000</td>
</tr>
<tr>
<td>Judicial Training</td>
<td>$320,000</td>
</tr>
</tbody>
</table>

Total ................................ $30,000 $22,978,158

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

This appropriation shall be administered by the administrative director of the state supreme court of appeals who shall draw his requisitions for warrants in payment in the form of payrolls, making deductions therefrom, as required by law, for taxes and other items.
The appropriation for Judges' Retirement System is to be transferred to the judges' retirement fund, in accordance with the law relating thereto upon requisition of the administrative director of the state supreme court of appeals.

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

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

**EXECUTIVE**

5—*Governor's Office*

(WV Code Chapter 5)

Acct. No. 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Governor</td>
<td>$72,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$1,031,429</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$7,200</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$359,659</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,340</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,474,628</strong></td>
</tr>
</tbody>
</table>

6—*Office of Community and Industrial Development*

(WV Code Chapter 5B)

Acct. No. 1210

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$564,174 $1,720,587</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$5,524  $23,186</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$856,484 $969,609</td>
</tr>
<tr>
<td>Equipment</td>
<td>$28,350 $16,500</td>
</tr>
<tr>
<td>The Economic Development Loan Fund</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>W. Va. Automobile</td>
<td>$50,000</td>
</tr>
<tr>
<td>Assistance Corporation</td>
<td>$220,000</td>
</tr>
<tr>
<td>Regional Council</td>
<td>$50,000</td>
</tr>
<tr>
<td>W. Va. Jobs Development Corporation</td>
<td>—</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>12</td>
<td>A.R.C. Assessment</td>
</tr>
<tr>
<td>13</td>
<td>W. Va. Public Energy</td>
</tr>
<tr>
<td>14</td>
<td>Authority</td>
</tr>
<tr>
<td>15</td>
<td>Partnership Grants</td>
</tr>
<tr>
<td>16</td>
<td>Fire Departments</td>
</tr>
<tr>
<td>17</td>
<td>Civil Air Patrol</td>
</tr>
<tr>
<td>18</td>
<td>Aeronautics Commission—Airport Matching</td>
</tr>
<tr>
<td>19</td>
<td>Emergency Assistance</td>
</tr>
<tr>
<td>20</td>
<td>National Youth Science Camp</td>
</tr>
<tr>
<td>21</td>
<td>To Local Entities</td>
</tr>
<tr>
<td>22</td>
<td>Transfer to State Spending Units</td>
</tr>
<tr>
<td>23</td>
<td>International Trade Offices</td>
</tr>
<tr>
<td>24</td>
<td>West Virginia Export Authority</td>
</tr>
<tr>
<td>25</td>
<td>Institute for Trade</td>
</tr>
<tr>
<td>26</td>
<td>Development-Marshall University</td>
</tr>
<tr>
<td>27</td>
<td>Center for Economic Analysis and Statistics-WVU</td>
</tr>
<tr>
<td>31</td>
<td>Total</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Federal/State Coordination (account no. 1210-06), Community Water Development and Partnership Grants (account no. 1210-11), Partnership Grants (account no. 1210-15), Fire Departments (account no. 1210-16), Coal Development (account no. 1210-17), Emergency Assistance (account no. 1210-18), Flood (account no. 1210-19), and Aeronautics Commission-Airport Matching (account no. 1210-23) at the close of the fiscal year 1985-86 is hereby reappropriated for 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 appropriation Emergency Jobs Program-Public Service Jobs, (account no. 1220-04), Emergency Jobs Program-Public Service Jobs, (account no. 1220-05), and Emergency Jobs Program-Parks, (account no. 1220-07), at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during fiscal year 1986-87.

8—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Acct. No. 1230

1 Unclassified—Total ........ $ 340,690

To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses 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

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

Any unexpended balance remaining in the appropriations (account no. 1240-06) and (account no. 1240-20) at the close of the fiscal year 1985-86 is hereby reappropriated 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 notification of federally declared disaster.

11—Office of Emergency Services

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Acct. No. 1300</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services $ 91,839 $ 272,283*</td>
</tr>
<tr>
<td>2. Annual Increment 540 6,768</td>
</tr>
<tr>
<td>3. Current Expenses 87,034 39,805</td>
</tr>
<tr>
<td>4. Repairs and Alterations 12,500 5,500</td>
</tr>
<tr>
<td>5. Equipment — —</td>
</tr>
<tr>
<td>6. To Local Entities 452,500 —</td>
</tr>
<tr>
<td>7. Transfer to State</td>
</tr>
<tr>
<td>8. Spending Units 155,000 —</td>
</tr>
<tr>
<td>10. Total $ 799,413 $ 324,356</td>
</tr>
</tbody>
</table>

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

FISCAL

12—Auditor’s Office—General Administration

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Acct. No. 1500</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Salary of State Auditor $ 46,800</td>
</tr>
<tr>
<td>2. Other Personal Services 1,601,728</td>
</tr>
<tr>
<td>3. Annual Increment 26,064</td>
</tr>
<tr>
<td>4. Current Expenses 668,199</td>
</tr>
<tr>
<td>5. Equipment 55,650</td>
</tr>
<tr>
<td>6. Microfilm 20,000</td>
</tr>
<tr>
<td>8. Total $ 2,418,441</td>
</tr>
</tbody>
</table>

13—Auditor’s Office—Social Security

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Acct. No. 1510</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. To Match Contributions of State Employees for</td>
</tr>
</tbody>
</table>
Social Security

Total .................. $ — $ 20,188,846

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

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

14—Auditor's Office—Unemployment Compensation

(WV Code Chapter 12)

Acct. No. 1520

Unclassified—Total ........ $ — $ 500,000

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

Should this appropriation be insufficient to meet the requirements of state spending units operating from the general revenue fund, any excess costs shall be a proper charge against the units and each spending unit shall reimburse to the Auditor's Office—Unemployment Compensation any amounts required for that department for costs in excess of this appropriation.
### 15—Treasurer’s Office
(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1600</td>
<td>Salary of State Treasurer</td>
<td>$50,400</td>
</tr>
<tr>
<td></td>
<td>Other Personal Services</td>
<td>$782,478</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>$5,904</td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>$295,165</td>
</tr>
<tr>
<td></td>
<td>Equipment</td>
<td>$30,000</td>
</tr>
<tr>
<td></td>
<td>Microfilm Program</td>
<td>$10,000</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>$1,173,947</strong></td>
</tr>
</tbody>
</table>

### 16—Treasurer’s Office—School Building Sinking Fund
(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1650</td>
<td><strong>Total</strong></td>
<td><strong>$14,691,500</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Treasurer’s Office—School Building Sinking Fund (account no. 1650-06) at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.

### 17—Municipal Bond Commission
(WV Code Chapter 13)

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1700</td>
<td>Personal Services</td>
<td>$88,476</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>$1,080</td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>$32,827</td>
</tr>
<tr>
<td></td>
<td>Equipment</td>
<td>$1,000</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>$123,383</strong></td>
</tr>
</tbody>
</table>

### 18—State Tax Department
### Ch. 29] Appropriations

(WV Code Chapter 11)

#### Acct. No. 1800

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

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

Any unexpended balance remaining in the appropriation for Other Expenses (account no. 1800-07) and Property Reappraisal Program (account no. 1800-09) at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.

19—Department of Finance and Administration

(WV Code Chapter 5A)

#### Acct. No. 2100

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$132,526</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$2,766,174*</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$45,144</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>$869,000</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$252,500</td>
</tr>
<tr>
<td>6 Postage</td>
<td>$42,800</td>
</tr>
<tr>
<td>7 Utilities</td>
<td>$1,800,000</td>
</tr>
<tr>
<td>8 Public Transportation</td>
<td>$600,000</td>
</tr>
<tr>
<td>9 Fire Service Fee</td>
<td>$410,000</td>
</tr>
<tr>
<td>10 Building Equipment and Supplies</td>
<td>$39,000</td>
</tr>
<tr>
<td>11 Southern Regional</td>
<td>$12,200</td>
</tr>
</tbody>
</table>
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

The workers' compensation commissioner, department of human services, public service commission, department of natural resources, department of motor vehicles, state department of highways, state health department and state tax department—accounting division for income tax purposes shall reimburse the postage appropriation of the department of finance and administration monthly for all meter service. Any spending unit operating from special revenue or receiving reimbursement for postage costs from the federal government shall refund to the postage account of the department of finance and administration such amounts. Should this appropriation for postage be insufficient to meet the mailing requirements of the state spending units as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the Postage appropriation of the department of finance and administration any amounts required for the department for postage in excess of this appropriation.

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

The state department of highways shall reimburse the appropriation of the department of finance and administration monthly for all actual expenses incurred pursuant to the provisions of chapter seventeen, article two-a, section thirteen of the code.

Any unexpended balance remaining in the appropri-
48 The appropriation 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

<table>
<thead>
<tr>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$96,116</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$720</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$36,218</td>
</tr>
<tr>
<td>Equipment</td>
<td>$3,000</td>
</tr>
<tr>
<td>Premiums, Claims and Other</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>Expenses</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$6,136,054</td>
</tr>
</tbody>
</table>

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

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

Any or all of the funds appropriated for Premiums, Claims, and Other Expenses may be transferred to a special account for disbursement for payment of premiums and insurance losses.
## 21—Attorney General
(WV Code Chapters 5, 14, 46 and 47)

### Acct. No. 2400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Attorney General</td>
<td>$50,400</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$2,440,504</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$18,612</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$561,055</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$72,255</td>
</tr>
<tr>
<td>6</td>
<td>Publication of Reports and Opinions</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>To Protect the Resources or Tax</td>
<td>$20,000</td>
</tr>
<tr>
<td>8</td>
<td>Structure of the State in Controversies or Legal Proceedings</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Affecting Same</td>
<td>$3,250</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td>$3,166,076</td>
</tr>
</tbody>
</table>

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

## 22—Commission on Uniform State Laws
(WV Code Chapter 29)

### Acct. No. 2450

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$13,000</td>
</tr>
</tbody>
</table>

To pay expenses of members of the commission on uniform state laws.

## INCORPORATING AND RECORDING

## 23—Secretary of State
(WV Code Chapters 3, 5 and 59)
### Ch. 29] APPROPRIATIONS

#### Acct. No. 2500

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Secretary of State</td>
<td>$43,200</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$569,032</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$3,168</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$205,881</td>
</tr>
<tr>
<td>Equipment</td>
<td>$36,575</td>
</tr>
<tr>
<td>Publication of State Register</td>
<td>—</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>Election Training Presentation</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$857,856</td>
</tr>
</tbody>
</table>

#### EDUCATIONAL

24—West Virginia Board of Regents (Control)

(WV Code Chapter 18)

#### Acct. No. 2790

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$130,574,954</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,108,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$23,916,275</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$1,309,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,124,000</td>
</tr>
<tr>
<td>Bureau of Coal Research</td>
<td>$1,205,000</td>
</tr>
<tr>
<td>National Research Center for Coal and Energy</td>
<td>$1,600,000</td>
</tr>
<tr>
<td>Doctoral Research—W.V.U.</td>
<td>$25,000</td>
</tr>
<tr>
<td>Agriculture and Forestry Experiment</td>
<td>$2,305,657</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$1,924,782</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Current Expenses</td>
<td>$380,875</td>
</tr>
<tr>
<td>14</td>
<td>Jackson's Mill State 4-H Camp</td>
<td>$125,000</td>
</tr>
<tr>
<td>15</td>
<td>Center for Economic Development</td>
<td>$100,000</td>
</tr>
<tr>
<td>16</td>
<td>Less: Authorized Expenditure from Earned Interest</td>
<td>$-0-</td>
</tr>
<tr>
<td>19</td>
<td>Total</td>
<td>$163,392,886</td>
</tr>
</tbody>
</table>

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

#### West Virginia Board of Regents

(WV Code Chapter 18)

Acct. No. 2800

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$820,275</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$10,000</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$379,318</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$7,000</td>
</tr>
<tr>
<td>5</td>
<td>Higher Education Grant Program</td>
<td>$3,500,000</td>
</tr>
<tr>
<td>6</td>
<td>Tuition Contract Programs</td>
<td>$710,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$5,426,593</td>
</tr>
</tbody>
</table>

#### West Virginia College of Osteopathic Medicine

*Clerk's Note: The Governor deleted all language appearing on lines twenty through twenty-four, Acct. No. 2790.*
### 27—Marshall University—Medical School

(WV Code Chapter 18)

<table>
<thead>
<tr>
<th>Acct. No. 2840</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services $</td>
</tr>
<tr>
<td>2 Annual Increment</td>
</tr>
<tr>
<td>3 Current Expenses</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
</tr>
<tr>
<td>5 Equipment</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

### 28—West Virginia University—Medical School

(WV Code Chapter 18)

<table>
<thead>
<tr>
<th>Acct. No. 2850</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services $</td>
</tr>
<tr>
<td>2 Annual Increment</td>
</tr>
<tr>
<td>3 Current Expenses</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
</tr>
<tr>
<td>5 Equipment</td>
</tr>
<tr>
<td>6 Family Practice</td>
</tr>
<tr>
<td>7 Residency Support</td>
</tr>
<tr>
<td>8 Community Hospital</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>
May be transferred to West Virginia University - medical school fund upon requisition of the governor.

29—State Department of Education  
(WV Code Chapters 18 and 18A)

Acct. No. 2860

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

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

30—State Department of Education— School Lunch Program
### Ch. 29] APPROPRIATIONS

(WV Code Chapters 18 and 18A)

#### Acct. No. 2870

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$487,394</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$8,136</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$778,371</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$1,700</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$8,000</td>
</tr>
<tr>
<td>6</td>
<td>Aid to Counties—Includes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>for Hot Lunches and Canning</td>
<td>$487,394</td>
</tr>
<tr>
<td>7</td>
<td>To Local Entities</td>
<td>$2,148,804</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$41,391,461</td>
</tr>
</tbody>
</table>

#### Acct. No. 2890

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$941,067</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$12,980</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$790,619</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$17,603</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$44,451</td>
</tr>
<tr>
<td>6</td>
<td>Vocational Aid</td>
<td>$9,684,945</td>
</tr>
<tr>
<td>7</td>
<td>Adult Basic Education</td>
<td>$2,282,400</td>
</tr>
<tr>
<td>8</td>
<td>Start Up Funds and Equipment for New and Existing Facilities</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>New and Expanding Industries</td>
<td>$1,825,000</td>
</tr>
<tr>
<td>10</td>
<td>New and Expanding Industries</td>
<td>$176,562</td>
</tr>
<tr>
<td>11</td>
<td>To Local Entities</td>
<td>$7,423,357</td>
</tr>
<tr>
<td>12</td>
<td>Capital Outlay (Construction)</td>
<td>$1,623,000</td>
</tr>
<tr>
<td>13</td>
<td>Buildings</td>
<td>$1,230</td>
</tr>
<tr>
<td>14</td>
<td>Total</td>
<td>$9,231,307</td>
</tr>
</tbody>
</table>

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

(WV Code Chapters 18 and 18A)

#### Acct. No. 2890

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$941,067</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$12,980</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$790,619</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$17,603</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$44,451</td>
</tr>
<tr>
<td>6</td>
<td>Vocational Aid</td>
<td>$9,684,945</td>
</tr>
<tr>
<td>7</td>
<td>Adult Basic Education</td>
<td>$2,282,400</td>
</tr>
<tr>
<td>8</td>
<td>Start Up Funds and Equipment for New and Existing Facilities</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>New and Expanding Industries</td>
<td>$1,825,000</td>
</tr>
<tr>
<td>10</td>
<td>New and Expanding Industries</td>
<td>$176,562</td>
</tr>
<tr>
<td>11</td>
<td>To Local Entities</td>
<td>$7,423,357</td>
</tr>
<tr>
<td>12</td>
<td>Capital Outlay (Construction)</td>
<td>$1,623,000</td>
</tr>
<tr>
<td>13</td>
<td>Buildings</td>
<td>$1,230</td>
</tr>
<tr>
<td>14</td>
<td>Total</td>
<td>$9,231,307</td>
</tr>
</tbody>
</table>

#### 16 Any unexpended balance remaining in the appropriation for New and Expanding Industries (account no. 2890-18) and Capital Outlay (account no. 2890-20) at the
close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.

32—Educational Broadcasting Authority
(WV Code Chapter 10)

Acct. No. 2910

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$94,090</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$576</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$40,550</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>$20,000</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$15,000</td>
</tr>
<tr>
<td>6 Regional ETV and Radio</td>
<td>$4,651,956</td>
</tr>
<tr>
<td>7 Annual Increment</td>
<td>$31,666</td>
</tr>
<tr>
<td>8 Capital Outlay—Equipment</td>
<td>$269,409</td>
</tr>
</tbody>
</table>

Total $2,110,530 $5,103,247

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

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

Funds appropriated under line 7 for Annual Increment shall be transferred to line 6, Regional ETV and Radio, only as required.

33—State Department of Education—State Aid to Schools
(WV Code Chapters 18 and 18A)

Acct. No. 2920

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

34—State Department of Education—State Aid to Schools
(WV Code Chapters 18 and 18A)

Acct. No. 2930
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Professional Educators</td>
<td>$482,042,213</td>
</tr>
<tr>
<td>2</td>
<td>Service Personnel</td>
<td>$173,926,230</td>
</tr>
<tr>
<td>3</td>
<td>Fixed Charges</td>
<td>$70,582,205</td>
</tr>
<tr>
<td>4</td>
<td>Transportation</td>
<td>$26,118,186</td>
</tr>
<tr>
<td>5</td>
<td>Administration</td>
<td>$4,579,116</td>
</tr>
<tr>
<td>6</td>
<td>Other Current Expenses</td>
<td>$42,637,949</td>
</tr>
<tr>
<td>7</td>
<td>Improve Instructional Programs</td>
<td>$28,144,279</td>
</tr>
<tr>
<td>8</td>
<td>Basic Foundation Allowances</td>
<td>$828,030,178</td>
</tr>
<tr>
<td>9</td>
<td>Less Local Share</td>
<td>$(104,672,453)</td>
</tr>
<tr>
<td>10</td>
<td>Total Basic State Aid</td>
<td>$723,357,725</td>
</tr>
<tr>
<td>11</td>
<td>Loss Reduction</td>
<td>$899,814</td>
</tr>
<tr>
<td>12</td>
<td>Professional Educators</td>
<td>$630,840</td>
</tr>
<tr>
<td>13</td>
<td>Service Personnel</td>
<td>$1,221,477</td>
</tr>
<tr>
<td>14</td>
<td>Increased Enrollment</td>
<td>$200,000</td>
</tr>
<tr>
<td>15</td>
<td>Total</td>
<td>$726,309,856</td>
</tr>
</tbody>
</table>

---

36—State Department of Education—
Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$490,606</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>3,762</td>
</tr>
<tr>
<td>Item</td>
<td>Appropriation A</td>
<td>Appropriation B</td>
</tr>
<tr>
<td>------</td>
<td>----------------</td>
<td>----------------</td>
</tr>
<tr>
<td>1</td>
<td>895,816</td>
<td>226,020</td>
</tr>
<tr>
<td>2</td>
<td>28,308</td>
<td>16,022</td>
</tr>
<tr>
<td>3</td>
<td>500</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>513,750</td>
<td>7,594,920</td>
</tr>
<tr>
<td>5</td>
<td>6,054,303</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>209,397</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>1,253,242</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>77,978</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>21,220,817</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>1,000,000</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>$23,153,559</td>
<td>$9,612,379</td>
</tr>
</tbody>
</table>

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

The appropriation for Aid to Counties may be expended by county boards of education for the initiation, and/or improvements of special education programs including employment of new special professional education personnel solely serving exceptional children; training of educational personnel to work with exceptional children; and supportive costs such as materials, transportation, contracted services, minor renovation
and other costs directly related to the special education delivery process prescribed by the state board of education. The appropriation may also be used for non-personnel costs associated with the maintenance of special education programs.

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

37—Teachers' Retirement Board
(WV Code Chapter 18)
Acct. No. 2980

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Teachers' Retirement Fund</td>
<td>$ 18,810,387</td>
</tr>
<tr>
<td>2</td>
<td>Supplemental Benefits for Annuitants</td>
<td>$ 6,400,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$ 25,210,387</td>
</tr>
</tbody>
</table>

38—West Virginia Schools for the Deaf and the Blind
(WV Code Chapters 18 and 18A)
Acct. No. 3330

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 3,930,943</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$ 5,328</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$ 898,800</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$ 396,200</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$ 223,100</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$ 5,454,371</td>
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</tbody>
</table>

39—State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)
### Appropriations

**Acct. No. 3360**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$</td>
<td>$149,839</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$2,854</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$93,396</td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$19,000</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,250</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$270,339</td>
</tr>
</tbody>
</table>

40—West Virginia Library Commission
(WV Code Chapter 10)

**Acct. No. 3500**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$99,700</td>
<td>$1,096,857</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,476</td>
<td>$23,140</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$129,378</td>
<td>$220,500</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$5,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$50,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Per-Capita Grants</td>
<td>—</td>
<td>$6,012,964</td>
</tr>
<tr>
<td>Library Matching Fund</td>
<td>$230,000</td>
<td>$397,800</td>
</tr>
<tr>
<td>Books, Periodicals and Films</td>
<td>—</td>
<td>$250,000</td>
</tr>
<tr>
<td>To Local Entities</td>
<td>$612,548</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,128,102</td>
<td>$8,015,361</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Library Matching Fund (Construction) (account no. 3500-10) at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.

41—Department of Culture and History
(WV Code Chapter 29)

**Acct. No. 3510**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$197,797</td>
<td>$1,340,870*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$972</td>
<td>$15,606</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$134,169</td>
<td>$288,500</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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 Wash-
22 ington 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.
Any unexpended balance remaining in the appropriation Washington Carver Camp (account no. 3510-05) at close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.

CORRECTIONS

42—Probation and Parole Board

(WV Code Chapter 62)

Acct. No. 3650

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries of Members of Board of Probation and Parole</td>
<td>$81,000*</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$54,152</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$972</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$23,874</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$300</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,000</td>
</tr>
<tr>
<td>Total</td>
<td>$161,298</td>
</tr>
</tbody>
</table>

*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

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$463,811*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$9,144</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$197,246</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$1,250</td>
</tr>
<tr>
<td>Equipment</td>
<td>$105,000</td>
</tr>
<tr>
<td>Adult Female Offenders</td>
<td></td>
</tr>
<tr>
<td>Contract</td>
<td>$746,658</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$22,448</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$468</td>
</tr>
<tr>
<td>Current</td>
<td></td>
</tr>
</tbody>
</table>
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 appropriation for Capitol Outlay (account no. 3750-08) at the close of the fiscal year 1985-86 is hereby reappropriated 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 Facility—
       Unclassified..... 1,000,000
10 Total............. $ 23,756,465

The commissioner of corrections, prior to the beginning of the fiscal year, shall file with the legislative auditor an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation. He shall also, within fifteen days after the close of each six month period of said fiscal year, file with the legislative auditor an itemized report of expenditures made during the preceding six-month
Such report shall include the total of expenditures made under each of the items 1, 2, 3, 4 and 5 above.

Any unexpended balance remaining in the appropriation for Capital Outlay (account no. 3770-04) and Pruntytown Facility-Unclassified (account no. 3770-07) at the close of the fiscal year 1985-86 is hereby reappropriated 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,212,342</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$28,049</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$19,544,566</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$4,000</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$100,669</td>
</tr>
<tr>
<td>6</td>
<td>Reimbursement to Community Mental Health and Mental Retardation Centers</td>
<td>$21,351,508</td>
</tr>
<tr>
<td>7</td>
<td>Community Behavior Health Programs for Social Services</td>
<td>$1,613,632</td>
</tr>
<tr>
<td>8</td>
<td>Special Olympics</td>
<td>$28,000</td>
</tr>
<tr>
<td>9</td>
<td>MH/MR-Special Projects</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>10</td>
<td>State Aid to Local Agencies</td>
<td>$6,527,898</td>
</tr>
<tr>
<td>11</td>
<td>Grants to Counties and EMS Entities</td>
<td>$1,840,000</td>
</tr>
<tr>
<td>12</td>
<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees</td>
<td>$2,630,000</td>
</tr>
<tr>
<td>13</td>
<td>Foster Grandparents Stipends/Travel</td>
<td>$62,370</td>
</tr>
<tr>
<td>14</td>
<td>Hemophiliac Assistance</td>
<td></td>
</tr>
</tbody>
</table>

*Total amount.
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program</td>
<td>—</td>
</tr>
<tr>
<td>23 Annual Increment</td>
<td>— 132,412</td>
</tr>
<tr>
<td>24 Placement Programs for the Developmentally Disabled</td>
<td>— 684</td>
</tr>
<tr>
<td>25 Poison Control Hot Line</td>
<td>— 3,842,750</td>
</tr>
<tr>
<td>26 Primary Care Contracts to Community Health Centers</td>
<td>— 150,000</td>
</tr>
<tr>
<td>27 Agent Orange</td>
<td>— 2,705,587</td>
</tr>
<tr>
<td>28 Alcohol, Drug Abuse, and D.D.</td>
<td>— 206,517</td>
</tr>
<tr>
<td>29 Corporate Non-Profit Community Health Centers</td>
<td>— 396</td>
</tr>
<tr>
<td>30 F.M.H.A. Mortgage Finance</td>
<td>— 2,996,000</td>
</tr>
<tr>
<td>31 Epidemiology Research</td>
<td>— 105,913</td>
</tr>
<tr>
<td>32 Public Health Residency</td>
<td>— 263,000</td>
</tr>
<tr>
<td>33 Program</td>
<td>— 0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 21,885,626</strong></td>
</tr>
</tbody>
</table>

Note: Includes salary of the director at $54,500 per annum.

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

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

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

Any unexpended balance remaining in the appropriation for Placement Programs for the Developmentally Disabled (account no. 4000-13) and Agent Orange (account no. 4000-17) at the end of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.
### Appropriations

#### 47—Department of Veterans Affairs—Veterans Home

(WV Code Chapter 9A)

**Acct. No. 4010**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,179,272</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$15,516</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$671,740</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>$24,200</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$6,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,194,788</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Repairs and Alterations (account no. 4010-02) and Equipment (account no. 4010-03) at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.

#### 48—Solid Waste Disposal

(WV Code Chapter 16)

**Acct. No. 4020**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$100,150</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$900</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$30,441</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$132,491</strong></td>
</tr>
</tbody>
</table>

#### 49—Department of Veterans Affairs

(WV Code Chapter 9A)

**Acct. No. 4040**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$708,145*</td>
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<tr>
<td>2 Annual Increment</td>
<td>$15,048</td>
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<tr>
<td>3 Current Expenses</td>
<td>$129,998</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$2,000</td>
</tr>
<tr>
<td>5 Educational Opportunities for</td>
<td></td>
</tr>
<tr>
<td>Children of War Veterans</td>
<td>$9,500</td>
</tr>
<tr>
<td>7 In aid of Veterans Day</td>
<td></td>
</tr>
<tr>
<td>8 Patriotic Exercises</td>
<td>$7,000</td>
</tr>
</tbody>
</table>
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10  Total                      $     —     $ 871,691

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

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

50—Department of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$17,963,790</td>
<td>$11,225,340*</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>425,579</td>
<td>515,672</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>235,227,826</td>
<td>4,201,724</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>—</td>
<td>12,200</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>100,000</td>
<td>46,757</td>
</tr>
<tr>
<td>6</td>
<td>Assistance Payments</td>
<td>—</td>
<td>28,403,306</td>
</tr>
<tr>
<td>7</td>
<td>Social Security</td>
<td>—</td>
<td>820,409</td>
</tr>
<tr>
<td>8</td>
<td>Matching Fund</td>
<td>—</td>
<td>620,000</td>
</tr>
<tr>
<td>9</td>
<td>Indigent Burials</td>
<td>—</td>
<td>20,286,465</td>
</tr>
<tr>
<td>10</td>
<td>Social Services</td>
<td>—</td>
<td>1,250,000</td>
</tr>
<tr>
<td>11</td>
<td>Emergency Assistance</td>
<td>—</td>
<td>58,822,249</td>
</tr>
<tr>
<td>12</td>
<td>Medical Services</td>
<td>—</td>
<td>605,000</td>
</tr>
<tr>
<td>13</td>
<td>T.R.I.P.</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>14</td>
<td>Food Stamps (Value)</td>
<td>164,000,000#</td>
<td>—</td>
</tr>
<tr>
<td>15</td>
<td>Government Donated Food (Value)</td>
<td>26,000,000#</td>
<td>—</td>
</tr>
<tr>
<td>16</td>
<td>Public Employees Retirement</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>17</td>
<td>Retirement Matching</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>18</td>
<td>Public Employees Health Insurance</td>
<td>—</td>
<td>650,502</td>
</tr>
<tr>
<td>19</td>
<td>Insurance</td>
<td>—</td>
<td>2,000,000</td>
</tr>
<tr>
<td>20</td>
<td>Child Support Agency</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>21</td>
<td>Total</td>
<td>$253,717,195</td>
<td>$129,459,624</td>
</tr>
</tbody>
</table>

# 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)
### Appropriations

**Acct. No. 4060**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$325,963</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$158,035</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>3,939</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2,862</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>230,012</td>
</tr>
<tr>
<td></td>
<td></td>
<td>68,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>9,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Programs for Elderly</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3,307,000</td>
</tr>
<tr>
<td>6</td>
<td>Golden Mountaineer Program</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td></td>
<td>87,170</td>
</tr>
<tr>
<td>7</td>
<td>Personal Services</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td></td>
<td>28,698</td>
</tr>
<tr>
<td>8</td>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td></td>
<td>472</td>
</tr>
<tr>
<td>9</td>
<td>Other Expenses</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td></td>
<td>58,000</td>
</tr>
<tr>
<td>10</td>
<td>Silver Haired Legislature</td>
<td>8,798,198</td>
</tr>
<tr>
<td></td>
<td></td>
<td>—</td>
</tr>
<tr>
<td>11</td>
<td>To Local Entities</td>
<td>20,000</td>
</tr>
<tr>
<td>12</td>
<td>Senior Citizens Centers—Land</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td>$9,367,112</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$3,708,067</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Senior Citizen Centers-Land Acquisition, Construction, Repairs and Alterations (account no. 4060-10), at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.
### Medical Facilities (Control)
(WV Code Chapter 16)

**Acct. No. 4180**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$46,370,968</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$1,107,784</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$13,341,737</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$645,650</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$381,918</td>
</tr>
<tr>
<td>6</td>
<td>Student Nurse Affiliation</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Program (Huntington)</td>
<td>$82,368</td>
</tr>
<tr>
<td>8</td>
<td>Psychiatric Training Center</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>—Student Nurses (Weston)</td>
<td>$263,051</td>
</tr>
<tr>
<td>10</td>
<td>Annual Increment</td>
<td>$2,808</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td>$62,196,284</td>
</tr>
</tbody>
</table>

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

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

### 53—State Board of Education—Rehabilitation Division
(WV Code Chapter 18)

**Acct. No. 4405**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$10,510,815</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>42,228</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>5,498,757</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>6,065,613</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>285,120</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>861,360</td>
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</table>
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repairs and Alterations</td>
<td>125,282</td>
<td>1,400</td>
</tr>
<tr>
<td>Equipment</td>
<td>282,537</td>
<td>51,600</td>
</tr>
<tr>
<td>Case Services</td>
<td>3,164,090</td>
<td>2,402,500</td>
</tr>
<tr>
<td>Social Security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Matching Fund</td>
<td>539,341</td>
<td>354,363</td>
</tr>
<tr>
<td>WVU-Reimbursement</td>
<td>1,043,699</td>
<td>50,900</td>
</tr>
<tr>
<td>Workshop Development</td>
<td></td>
<td>1,281,400</td>
</tr>
<tr>
<td>Blind Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coordinating Unit</td>
<td></td>
<td>37,000</td>
</tr>
<tr>
<td>Disability Determination—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical Payments</td>
<td>7,264,375</td>
<td></td>
</tr>
<tr>
<td>Computer Assisted</td>
<td></td>
<td>45,000</td>
</tr>
<tr>
<td>Drafting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>28,471,124</td>
<td>11,436,256</td>
</tr>
</tbody>
</table>

### Business and Industrial Relations

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

(WV Code Chapters 21 and 47)

Acct. No. 4500

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>197,384</td>
<td>1,072,555*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>6,500</td>
<td>16,308</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>147,811</td>
<td>302,764</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td></td>
<td>750</td>
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<tr>
<td>Equipment</td>
<td>72</td>
<td>3,000</td>
</tr>
<tr>
<td>Labor Management</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advisory Council</td>
<td></td>
<td>25,989</td>
</tr>
<tr>
<td>Total</td>
<td>351,767</td>
<td>1,421,366</td>
</tr>
</tbody>
</table>

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

#### 55—Department of Employment Security

Account No. 4510

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Assessment—</td>
<td></td>
<td>$ 31,500,000</td>
</tr>
</tbody>
</table>

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

56—Department of Commerce
(WV Code Chapter 5B)

Acct. No. 4625

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$8,113,868*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>192,250</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>1,899,960</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>92,436</td>
</tr>
<tr>
<td>Equipment</td>
<td>90,000</td>
</tr>
<tr>
<td>State Park—Capital Outlay</td>
<td>175,000</td>
</tr>
<tr>
<td>Total</td>
<td>$10,563,514</td>
</tr>
</tbody>
</table>

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

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

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

57—Interstate Commission on Potomac River Basin
(WV Code Chapter 29)
Acct. No. 4730

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia's Contribution to Potomac River Basin Interstate Commission</td>
<td>$20,300</td>
</tr>
</tbody>
</table>

58—Ohio River Valley Water

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

**Sanitation Commission**

(WV Code Chapter 29)

Acct. No. 4740

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia’s Contribution to the Ohio River Valley Water Sanitation Commission</td>
<td>$70,490</td>
</tr>
</tbody>
</table>

**59—West Virginia Air Pollution Control Commission**

(WV Code Chapter 16)

Acct. No. 4760

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$837,394</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$6,840</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$439,055</td>
</tr>
<tr>
<td>Equipment</td>
<td>$32,500</td>
</tr>
<tr>
<td>Total</td>
<td>$1,315,789</td>
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</table>

**60—Department of Energy**

(WV Code Chapter 22)

Acct. No. 4775

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,178,487</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$40,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$8,924,635</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$60,183,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$374,000</td>
</tr>
<tr>
<td>Total</td>
<td>$72,700,122</td>
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</tbody>
</table>

*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

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$5,500</td>
</tr>
</tbody>
</table>
62—West Virginia State Aeronautics Commission

(WV Code Chapter 29)
Acct. No. 4850

1 Any unexpended balance remaining in the appropriation Airport Matching (account no. 4850-11) at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during fiscal year 1986-87. Any unexpended balance is hereby redesignated as Aeronautics Commission—Airport Matching and may be transferred 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Commissioner</td>
<td>$46,800</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>2,203,268</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>46,404</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>1,153,321</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>60,759</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Multiflora Rose Eradication Program</td>
<td>115,000</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Gypsy Moth Program</td>
<td>300,000</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Forestry Division</td>
<td>2,519,765</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>2,069,267</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>47,196</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>305,992</td>
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</tr>
<tr>
<td></td>
<td>Repairs and Alterations</td>
<td>22,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Equipment</td>
<td>75,310</td>
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</tr>
<tr>
<td>9</td>
<td>Special Livestock Maintenance Program</td>
<td>150,000</td>
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</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$892,045</td>
<td>$6,595,317</td>
</tr>
</tbody>
</table>

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

### 66—Farm Management Commission

(WV Code Chapter 19)

### Acct. No. 5110

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,117,933</td>
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<td>2</td>
<td>Annual Increment</td>
<td>18,792</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>946,020</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>254,000</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
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<td></td>
</tr>
<tr>
<td>6</td>
<td>Livestock Purchase</td>
<td>273,000</td>
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</tbody>
</table>
### APPROPRIATIONS

8 Total $2,888,745

#### 67—Department of Agriculture—
**Soil Conservation Committee**

(WV Code Chapter 19)

Acct. No. 5120

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$359,876</td>
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<td>Annual Increment</td>
<td>$7,452</td>
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<td>3</td>
<td>Current Expenses</td>
<td>$123,899</td>
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<tr>
<td>4</td>
<td>Watershed Expenses</td>
<td>$200,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$691,227</td>
</tr>
</tbody>
</table>

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

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

(Matching Fund)

(WV Code Chapter 19)

Acct. No. 5130

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$849,585</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$13,284</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$224,387</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>$31,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$1,118,256</td>
</tr>
</tbody>
</table>

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

#### 69—Department of Agriculture—
**Meat Inspection**
### APPROPRIATIONS

(WV Code Chapter 19)

#### Acct. No. 5140

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$442,884</td>
<td>$405,052</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$6,822</td>
<td>$6,822</td>
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<tr>
<td>Current Expenses</td>
<td>$184,345</td>
<td>$183,446</td>
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<tr>
<td>Equipment</td>
<td>$1,270</td>
<td>$1,270</td>
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<tr>
<td>Reimbursement</td>
<td>$100,000</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$735,321</td>
<td>$596,590</td>
</tr>
</tbody>
</table>

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

---

70—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

#### Acct. No. 5150

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Awards</td>
<td>$70,000</td>
</tr>
<tr>
<td>Fairs and Festivals</td>
<td>$172,950</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$242,950</td>
</tr>
</tbody>
</table>

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CONSERVATION AND DEVELOPMENT

71—Geological and Economic Survey

(WV Code Chapter 29)

#### Acct. No. 5200

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$83,484</td>
<td>$1,395,558</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$972</td>
<td>$18,144</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$57,594</td>
<td>$372,245</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$1,000</td>
<td>$15,138</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,500</td>
<td>$6,250</td>
</tr>
<tr>
<td>Special Studies</td>
<td>-</td>
<td>$71,443</td>
</tr>
<tr>
<td>To Secure Federal and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Contracts</td>
<td>-</td>
<td>$75,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$144,550</td>
<td>$1,953,778</td>
</tr>
</tbody>
</table>
The appropriation on line 7-8, To Secure Federal and Other Contracts, may be transferred to a special revenue account for the purpose of providing advance funding for such contracts.

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

### 72—Water Resources Board

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Acct. No. 5640</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services $</td>
</tr>
<tr>
<td>2 Annual Increment</td>
</tr>
<tr>
<td>3 Current Expenses</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
</tr>
<tr>
<td>5 Equipment</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

### 73—Department of Natural Resources

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Acct. No. 5650</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services $4,358,187</td>
</tr>
<tr>
<td>2 Annual Increment</td>
</tr>
<tr>
<td>3 Current Expenses $2,506,408</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
</tr>
<tr>
<td>5 Equipment</td>
</tr>
<tr>
<td>6 Transfer to State</td>
</tr>
<tr>
<td>7 Spending Units</td>
</tr>
<tr>
<td>8 Land and Buildings</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

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

### 74—Blennerhassett Historical Park Commission

(WV Code Chapter 29)
### Acct. No. 5660

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$185,475</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,692</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$53,402</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$18,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$146,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$409,569</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Blennerhassett Island (account no. 5660-07) at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.

### 75—Water Development Authority

(WV Code Chapter 20)

Acct. No. 5670

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$4,824</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$150,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$100,000</td>
</tr>
<tr>
<td>B &amp; O Commuter Service</td>
<td>$100,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$529,278</strong></td>
</tr>
</tbody>
</table>

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

### 76—West Virginia Railroad Maintenance Authority

(WV Code Chapter 29)

Acct. No. 5690

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$529,278</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$4,824</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$150,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$100,000</td>
</tr>
<tr>
<td>B &amp; O Commuter Service</td>
<td>$100,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$887,092</strong></td>
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</tbody>
</table>
PROTECTION

77—Department of Public Safety

(WV Code Chapter 15)

Acct. No. 5700

<table>
<thead>
<tr>
<th>Item</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Current Expenses</th>
<th>Repairs and Alterations</th>
<th>Equipment</th>
<th>Emergency Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$15,318</td>
<td>288</td>
<td>$133,005</td>
<td>—</td>
<td>10,000</td>
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</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>5</td>
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<td>6</td>
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<tr>
<td>7</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>$10,000</td>
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</tr>
</tbody>
</table>

$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

<table>
<thead>
<tr>
<th>Item</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Current Expenses</th>
<th>Repairs and Alterations</th>
<th>Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</th>
<th>Property Maintenance</th>
<th>Annual Increment</th>
<th>State Armory Board</th>
<th>Annual Increment</th>
<th>College Education Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>—</td>
<td>—</td>
<td>$282,140*</td>
<td>5,508</td>
<td>6684,800</td>
<td>62,000</td>
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<td>2</td>
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<td></td>
<td>1,179,212</td>
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<td></td>
<td></td>
<td>15,444</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>200,000</td>
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<tr>
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<tr>
<td>10</td>
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<td>—</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>781,972</td>
<td>2,493,966</td>
<td></td>
<td></td>
<td></td>
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<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3,096</td>
<td>13,572</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
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<td></td>
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<td></td>
<td>—</td>
<td>200,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Total ......................... $785,068 $5,080,642
*Includes salary of the adjutant general at $34,000 per annum

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

Funds appropriated on line 12 for Annual Increment shall be transferred to line 11, State Armory Board, only 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

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

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

80—West Virginia Public Legal Services Council
### Ch. 29) APPROPRIATIONS

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Acct. No. 5900</th>
<th>Personal Services</th>
<th>$205,440</th>
<th>$466,187</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Council and Central Office</td>
<td>—</td>
<td>$154,291</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>—</td>
<td>792</td>
</tr>
<tr>
<td>3</td>
<td>Other Expenses</td>
<td>—</td>
<td>48,537</td>
</tr>
<tr>
<td>4</td>
<td>Appointed Counsel Fees</td>
<td>—</td>
<td>3,748,881</td>
</tr>
<tr>
<td>5</td>
<td>Public Defender Operations</td>
<td>—</td>
<td>577,300</td>
</tr>
<tr>
<td>6</td>
<td>Criminal Law Research Center Appellate Division</td>
<td>—</td>
<td>135,171</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>—</td>
<td>$4,664,972</td>
</tr>
</tbody>
</table>

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

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

#### 81—Human Rights Commission

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Acct. No. 5980</th>
<th>Personal Services</th>
<th>$205,440</th>
<th>$466,187</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Annual Increment</td>
<td>—</td>
<td>5,220</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>—</td>
<td>228,078</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>—</td>
<td>11,708</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>—</td>
<td>$711,193</td>
</tr>
</tbody>
</table>

#### 82—Women's Commission

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Acct. No. 6000</th>
<th>Personal Services</th>
<th>—</th>
<th>$54,174</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Annual Increment</td>
<td>—</td>
<td>504</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>—</td>
<td>21,245</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>—</td>
<td>3,700</td>
</tr>
</tbody>
</table>
83—*Education Employees Grievance Board*

*(WV Code Chapter 18)*

Acct. No. 6015

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$208,750</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$720</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$85,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$28,500</td>
</tr>
</tbody>
</table>

6 Total ..................................$ 322,970

84—*West Virginia Public Employees Retirement Board*

*(WV Code Chapter 5)*

Acct. No. 6140

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers Accumulation Fund</td>
<td>$0</td>
</tr>
<tr>
<td>Expense Fund</td>
<td>$70,000</td>
</tr>
<tr>
<td>Supplemental Benefits For</td>
<td></td>
</tr>
<tr>
<td>Annuitants</td>
<td>$2,232,000</td>
</tr>
</tbody>
</table>

6 Total ..................................$ 2,302,000

The above appropriation is intended to cover the state's share of West Virginia public employees retirement coverage for those departments operating from the general revenue fund. The state department of highways, department of motor vehicles, workers' compensation commissioner, public service commission and other departments operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balance in the various special revenue funds in excess of specific appropriations.

The board shall transfer and cause to expire into the 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$368,180</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$6,516</td>
</tr>
<tr>
<td>3 Public Employees Health Insurance</td>
<td></td>
</tr>
<tr>
<td>4 State Contributions</td>
<td>$68,444,064</td>
</tr>
<tr>
<td>6 Total</td>
<td>$68,618,760</td>
</tr>
</tbody>
</table>

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

Any unexpended balance remaining in the appropriation Public Employees Health Insurance State Contributions at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.

86—Insurance Commissioner

(WV Code Chapter 33)

Acct. No. 6160

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$821,695*</td>
</tr>
<tr>
<td>Item</td>
<td>Amount</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$3,024</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$240,895</td>
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<tr>
<td>Equipment</td>
<td>$20,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,085,614</strong></td>
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</tbody>
</table>

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

**87—State Fire Commission**

(WV Code Chapter 29)

Acct. 6170

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$677,574</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$9,864</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$289,662</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$3,151</td>
</tr>
<tr>
<td>Equipment</td>
<td>$36,374</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,016,625</strong></td>
</tr>
</tbody>
</table>

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

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

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

**88—State Department of Highways**

(WV Code Chapters 17 and 17C)

Acct. No. 6700
TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Federal Funds Fiscal Year 1986-87</th>
<th>Other Funds Fiscal Year 1986-87</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance Expressway,</td>
<td>$ -</td>
<td>$55,000,000</td>
</tr>
<tr>
<td>Trunkline and Feeder</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Maintenance, State</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Local Services</td>
<td>-</td>
<td>75,137,000</td>
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<tr>
<td>Maintenance, Contract</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Paving and Secondary</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Road Maintenance</td>
<td>-</td>
<td>30,000,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>-</td>
<td>1,599,000</td>
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<tr>
<td>Toll Road Examination</td>
<td>-</td>
<td>500,000</td>
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<tr>
<td>Equipment Revolving</td>
<td>-</td>
<td>12,329,000</td>
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<tr>
<td>General Operations</td>
<td>-</td>
<td>23,821,000*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>-</td>
<td>208,000</td>
</tr>
<tr>
<td>Debt Service</td>
<td>-</td>
<td>83,650,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>-</td>
<td>124,989,000</td>
</tr>
<tr>
<td>Other Federal Aid Program</td>
<td>-</td>
<td>190,721,000</td>
</tr>
<tr>
<td>Appalachian Program</td>
<td>-</td>
<td>30,149,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>-</td>
<td>5,041,000</td>
</tr>
<tr>
<td>Total</td>
<td>$ -</td>
<td>$633,144,000</td>
</tr>
</tbody>
</table>

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

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

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

There is hereby appropriated within the above items sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with chapter fourteen, article two, sections seventeen and eighteen of the code.
Funds appropriated on line 10 for Annual Increment shall be transferred to line 9, General Operations, only as required.

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

89—Department of Motor Vehicles
(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)

Acct. No. 6710

<table>
<thead>
<tr>
<th>TO BE PAID FROM STATE ROAD FUND</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ...........</td>
<td>$</td>
</tr>
<tr>
<td>2 Annual Increment ...........</td>
<td>—</td>
</tr>
<tr>
<td>3 Current Expenses ............</td>
<td>—</td>
</tr>
<tr>
<td>4 Equipment ..................</td>
<td>—</td>
</tr>
<tr>
<td>5 Purchase of License Plates ..</td>
<td>—</td>
</tr>
<tr>
<td>6 Social Security Matching ....</td>
<td>—</td>
</tr>
<tr>
<td>7 Public Employees ... ... ...</td>
<td>—</td>
</tr>
<tr>
<td>8 Retirement Matching .......</td>
<td>—</td>
</tr>
<tr>
<td>9 Public Employees Health .....</td>
<td>—</td>
</tr>
<tr>
<td>10 Insurance ..................</td>
<td>—</td>
</tr>
<tr>
<td>12 Total ......................</td>
<td>$</td>
</tr>
</tbody>
</table>

$2,550,215*  
48,708  
3,367,203  
323,900  
567,180  
198,360  
263,556 
349,237

$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

<table>
<thead>
<tr>
<th>TO BE PAID FROM FEDERAL FUNDS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ...........</td>
<td>$</td>
</tr>
<tr>
<td>2 Annual Increment ...........</td>
<td>—</td>
</tr>
<tr>
<td>3 Current Expenses ............</td>
<td>—</td>
</tr>
<tr>
<td>4 Equipment ..................</td>
<td>—</td>
</tr>
</tbody>
</table>

$73,883  
1,728  
54,230  
500

—
6 Total .................. $ 130,341 $ —

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

8 Federal funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the state superintendent of schools and approval of the governor for any emergency which might arise in the operation of this division during the fiscal year.

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

TO BE PAID FROM SPECIAL REVENUE FUND

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

92—Treasurer’s Office—Disaster Recovery Fund

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
5 Total ........................ $ — $ 4,000,000

7 All revenue collected by the tax commissioner under the provisions of this article, the disposition of which is not otherwise dedicated by constitutional provision or prior statutory enactment, shall be paid by him into a special Disaster Recovery Fund, which is hereby created in the state treasury to be used as appropriated by the
Legislature for the recovery of losses occurring in the
November, one thousand nine hundred eighty-five flood
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

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>133,437</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>1,872</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>—</td>
<td>146,005</td>
</tr>
<tr>
<td>Equipment</td>
<td>—</td>
<td>5,000</td>
</tr>
<tr>
<td>Total</td>
<td>$</td>
<td>$ 286,314</td>
</tr>
</tbody>
</table>

The total amount of the appropriation shall be paid 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

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>262,940</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>4,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>—</td>
<td>193,313</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>—</td>
<td>7,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>—</td>
<td>16,250</td>
</tr>
<tr>
<td>Total</td>
<td>$</td>
<td>$ 484,003</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid

95—West Virginia Racing Commission
(WV Code Chapter 19)
Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Expenses</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>5,000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$</td>
<td>$ 5,000</td>
</tr>
</tbody>
</table>
3 from special revenue fund out of collections of license fees and fines as provided by law.

5 No expenditures shall be made from this amount except for hospitalization, medical care and/or funeral 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

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$12,000</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from special revenue fund out of fees and collections as 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

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$892,559</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$15,300</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$456,899</td>
</tr>
<tr>
<td>Equipment</td>
<td>$60,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$65,658</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>Retirement Matching</td>
<td>$87,238</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>Health Insurance</td>
<td>$107,470</td>
</tr>
<tr>
<td>Total</td>
<td>$1,685,124</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from special revenue fund as provided by chapter five-a, article two of the code.
The above appropriation includes salaries and operating expenses.

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

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 3,073,743</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ 50,148</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$ 5,251,397</td>
</tr>
<tr>
<td>Equipment</td>
<td>$ 207,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$ 227,250</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>Retirement Matching</td>
<td>$ 301,940</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>Health Insurance</td>
<td>$ 394,130</td>
</tr>
<tr>
<td>Total</td>
<td>$ 9,505,608</td>
</tr>
</tbody>
</table>

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

99—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$ 447,894</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ 5,940</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$ 25,724</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$ 33,121</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>Retirement Matching</td>
<td>$ 44,008</td>
</tr>
</tbody>
</table>
Ch. 29

APPROPRIATIONS

7 Public Employees Health Insurance ...... 37,192

10 Total .................. $ 593,879

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

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

Funds for the above appropriation shall be disbursed in accordance with chapter nineteen, article twenty-six 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

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

102—Public Service Commission

(WV Code Chapter 24)

Acct. No. 8280
### TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$56,997</td>
<td>$3,573,656*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>41,112</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>22,127</td>
<td>1,293,230</td>
</tr>
<tr>
<td>Equipment</td>
<td>—</td>
<td>90,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>—</td>
<td>30,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>—</td>
<td>266,192</td>
</tr>
<tr>
<td>Public Employees</td>
<td>—</td>
<td>353,681</td>
</tr>
<tr>
<td>Public Employees Health</td>
<td>—</td>
<td>305,416</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$79,124</td>
<td>$5,953,287</td>
</tr>
</tbody>
</table>

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

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

---

### 103—Public Service Commission—
Gas Pipeline Division

(WV Code Chapter 24B)

Acct. No. 8285

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$29,686</td>
<td>$165,350*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>1,153</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>15,841</td>
<td>68,704</td>
</tr>
<tr>
<td>Equipment</td>
<td>—</td>
<td>1,500</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>—</td>
<td>12,339</td>
</tr>
<tr>
<td>Public Employees</td>
<td>—</td>
<td>16,395</td>
</tr>
<tr>
<td>Public Employees Health</td>
<td>—</td>
<td>14,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$45,527</td>
<td>$279,441</td>
</tr>
</tbody>
</table>

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

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

104—Public Service Commission—
Motor Carrier Division
(WV Code Chapter 24A)
Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,098,564*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>13,284</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>349,490</td>
</tr>
<tr>
<td>Equipment</td>
<td>5,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>81,506</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>Retirement Matching</td>
<td>108,294</td>
</tr>
<tr>
<td>Health Insurance</td>
<td>96,304</td>
</tr>
<tr>
<td>Total</td>
<td>1,752,442</td>
</tr>
</tbody>
</table>

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

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

105—Public Service Commission—
Consumer Advocate
(WV Code Chapter 24)
Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$285,784</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>972</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>286,634</td>
</tr>
<tr>
<td>Equipment</td>
<td>3,200</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>21,114</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
</tbody>
</table>
7 Retirement Matching...... — 28,054
8 Public Employees
9 Health Insurance.......... — 29,040
11 Total ...................$ — $ 654,798

The total amount of this appropriation shall be paid from special revenue fund out of collections made by the 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

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

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

6 Total ...................... $  —  $ 649,130

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

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 —

Total .......................$ 190,000 $ 158,072

These funds are intended to be expended for court 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**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Administrative</td>
<td>$187,110</td>
</tr>
<tr>
<td>2</td>
<td>Welch Emergency</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Hospital Contingency for Operating and</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Miscellaneous</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Contingency for Repairs and Alterations, Equipment, Emergency Services and</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Miscellaneous Projects</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>DD and Chronic Mentally Ill Group Homes West Virginia</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Behavioral Health Care Delivery System Plan Capital</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Outlay and Renovations</td>
<td>$1,800,000</td>
</tr>
<tr>
<td>10</td>
<td>Colin Anderson Center Capital Outlay and Renovations</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>for Certification, Life Safety and Energy Conservation</td>
<td>$250,000</td>
</tr>
<tr>
<td>12</td>
<td>Denmar Hospital—Capital Outlay and Renovations</td>
<td>$200,000</td>
</tr>
<tr>
<td>13</td>
<td>for Certification, Life Safety and Energy Conservation</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Greenbrier Center—Capital Outlay and Renovations</td>
<td>$300,000</td>
</tr>
<tr>
<td>15</td>
<td>Contingency for Repairs and Alterations, Equipment, Emergency Services and</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Miscellaneous Projects</td>
<td>$500,000</td>
</tr>
<tr>
<td>17</td>
<td>DD and Chronic Mentally Ill Group Homes West Virginia</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Behavioral Health Care Delivery System Plan Capital</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Outlay and Renovations</td>
<td>$2,825,000</td>
</tr>
<tr>
<td>20</td>
<td>for Certification, Life Safety and Energy Conservation</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Hopemont Hospital—Capital Outlay and Renovations</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Outlay and Renovations for Certification, Life Safety and Energy Conservation</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------</td>
<td>---</td>
</tr>
<tr>
<td>37</td>
<td>Lakin Hospital—Capital Outlay and Renovations for Certification, Life Safety and Energy Conservation</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Weston Hospital—Capital Outlay and Renovations for Certification, Life Safety and Energy Conservation</td>
<td>46</td>
</tr>
<tr>
<td>39</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

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

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

Any unexpended balances remaining in this appropriation and prior years appropriations at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87 with the exception of account no. 8500-43 (FY 85) Huntington Hospital - West Virginia Behavioral Health Care Delivery System Plan Capital Outlay and Renovations, $1,300,000 shall be deleted and account no. 8500-08 Pinecrest Hospital Capital Outlay and Renovations (FY 82) shall be reduced to $54,478, to be effective from date of passage of the budget act.

Any unexpended balance remaining in the appropriation Hospital Services Revenue Account at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during fiscal year 1986-87.
### Ch. 29] Appropriations

(WV Code Chapter 16)

**Acct. No. 8510**

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$112,001</td>
<td>$594,200</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>1,008</td>
<td>3,996</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>178,027</td>
<td>467,251</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td></td>
<td>5,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$291,036</td>
<td>$1,070,447</td>
</tr>
</tbody>
</table>

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

#### 114—Geological and Economic Survey

(WV Code Chapter 29)

**Acct. No. 8589**

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$120,000</td>
</tr>
</tbody>
</table>

The above appropriation shall be used in accordance with chapter twenty-nine, article two, section four of the code.

#### 115—Board of Regents

Special Capital Improvement Fund

(WV Code Chapter 18)

**Acct. No. 8830**

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>$543,000</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the special capital improvement fund created in chapter eighteen, article twenty-four, section four of the 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

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>$2,397,000</td>
</tr>
<tr>
<td>2</td>
<td>Capital Building</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$4,500,000</td>
</tr>
<tr>
<td>4</td>
<td>(Supplements Operating</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Budget at College and Universities</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Miscellaneous Campus</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Development Projects</td>
<td>$1,400,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$8,297,000</td>
</tr>
</tbody>
</table>

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

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

117—Board of Regents—
Special Capital Improvement Fund
(WV Code Chapter 18)
Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>$1,639,000</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from the nonrevolving special capital improvement fund created by chapter eighteen, article twenty-four, section 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

Any unexpended balances remaining in prior years and 1985-86 appropriations are hereby reappropriated 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

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$13,282,000</td>
</tr>
<tr>
<td>Building and Campus Renewal</td>
<td>$9,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>$22,282,000</td>
</tr>
</tbody>
</table>

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

From the appropriation Building and Campus Renewal, $200,000 is intended for repairs and alterations for Jackson's Mill.
Any unexpended balances remaining in prior years' and in the 1985-86 appropriations are hereby reappropriated for expenditure during the fiscal year 1986-87, except account number 8855-46, fiscal year 1985, which shall expire on June 30, 1986.

### 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

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$8,537,543</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>109,260</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>5,307,263</td>
</tr>
<tr>
<td>Equipment</td>
<td>180,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>623,723</td>
</tr>
<tr>
<td>Public Employee</td>
<td></td>
</tr>
<tr>
<td>Retirement</td>
<td></td>
</tr>
<tr>
<td>Matching</td>
<td>828,723</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>Health Insurance</td>
<td>852,420</td>
</tr>
<tr>
<td>Employers' Excess</td>
<td></td>
</tr>
<tr>
<td>Liability Fund</td>
<td>541,201</td>
</tr>
<tr>
<td>Personal Services</td>
<td>131,537</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>576</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>346,839</td>
</tr>
<tr>
<td>Equipment</td>
<td>21,850</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>9,619</td>
</tr>
</tbody>
</table>
There is hereby authorized to be paid out of the above appropriation for Current Expenses the amount necessary for the premiums on bonds given by the state treasurer as bond custodian for the protection of the workers' compensation fund. This sum shall be 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$9,684,683</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$220,356</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$5,359,158</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$72,800</td>
</tr>
<tr>
<td>Equipment</td>
<td>$109,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$714,025</td>
</tr>
<tr>
<td>Public Employees Retirement Match</td>
<td>$948,705</td>
</tr>
<tr>
<td>Health Insurance</td>
<td>$1,342,000</td>
</tr>
<tr>
<td>Total</td>
<td>$18,450,727</td>
</tr>
</tbody>
</table>

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

The above appropriations include the salary of the commissioner, salaries of store personnel, store inspectors, store operating expenses and equipment; and salaries, expenses and equipment of administration offices.
20 There is hereby appropriated from liquor revenues, in addition to the appropriation, the necessary amount for 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$8,165,800</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$4,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$3,837,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$774,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$797,000</td>
</tr>
<tr>
<td>WVU Family Practice Program</td>
<td>$432,000</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>$1,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$15,009,800</strong></td>
</tr>
</tbody>
</table>

11 Any unexpended balances remaining in the appropriations for Capital Outlay (account no. 9280-08) and the 1985-86 appropriation for the West Virginia University—Medical Center at the close of the fiscal year 1985-86 are hereby reappropriated for expenditure during fiscal year 1986-87.

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

There are hereby appropriated for the remainder of the fiscal year 1985-86 and to remain in effect until June 30, 1987, from the funds as designated, in the amounts as specified, and for the claimants as named in enrolled house bill no. 1960 and no. 1961, acts, legislature,
regular session, 1986 total general revenue funds of $632,699.04, state road funds of $583,712.62, special revenue funds of $18,439.14 and federal funds of $13,136.56 for payments of claims against the state.

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

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

Any unexpended balance remaining in the appropriation balances at the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal 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—

126—State Tax Department
Acct. No. 1800

1 Property Reappraisal Program $ — $ —0—
2 Reimbursement to twenty-nine counties
<table>
<thead>
<tr>
<th>Account Name</th>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>127-State Board of Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acct. No. 2250</td>
<td>Premiums, Claims and Other Expenses—Total</td>
<td>$</td>
</tr>
<tr>
<td>128-Marshall University—Medical School</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acct. No. 2840</td>
<td>Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>129-Educational Broadcasting Authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acct. No. 2910</td>
<td>Equipment</td>
<td>$</td>
</tr>
<tr>
<td>130-Department of Corrections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acct. No. 3770</td>
<td>Current Expenses</td>
<td>$</td>
</tr>
<tr>
<td>131-Department of Human Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acct. No. 4050</td>
<td>Assistance Payments</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>Medical Services</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>Emergency Flood Disaster</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Assistance for Replacement Residential Housing, Site</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Acquisition, or both, in the 29 counties</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$</td>
</tr>
</tbody>
</table>
132—Department of Employment Security

Acct. No. 4510

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Assessment—Total</td>
<td>$-0-</td>
</tr>
</tbody>
</table>

133—Department of Commerce

Acct. No. 4625

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$368,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$417,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$75,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$10,000</td>
</tr>
<tr>
<td>Grave Creek Mound</td>
<td>$-0-</td>
</tr>
<tr>
<td>Interstate Information</td>
<td>$-0-</td>
</tr>
<tr>
<td>Total</td>
<td>$870,000</td>
</tr>
</tbody>
</table>

134—Department of Agriculture—Soil Conservation

Acct. No. 5120

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flood Damage Rehabilitation—Farm</td>
<td>$1,590,000</td>
</tr>
</tbody>
</table>

135—West Virginia Public Legal Services Council

Acct. No. 5900

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointed Council Fees—Total</td>
<td>$480,000</td>
</tr>
</tbody>
</table>

1 Sec. 7. Appropriations from Revenue Sharing Trust Fund.—The following items are hereby appropriated from the revenue sharing trust fund to be available for expenditure from date of passage.

136—Department of Finance and Administration

Acct. No. 9740

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Repairs and Alterations</td>
<td>$782,922</td>
</tr>
</tbody>
</table>

1 Sec. 8. Reappropriations—Revenue Sharing

Sec. 9. Appropriation from federal block grants.—The following items are hereby appropriated from federal block grants and to be available for 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount (in $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>190,731</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>1,800</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>243,705</td>
</tr>
<tr>
<td>Equipment</td>
<td>5,000</td>
</tr>
<tr>
<td>To Local Entities</td>
<td>15,086,336</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$15,527,572</td>
</tr>
</tbody>
</table>

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

Acct. No. 8030

TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount (in $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>—</td>
</tr>
<tr>
<td>Equipment</td>
<td>—</td>
</tr>
<tr>
<td>To Local Entities</td>
<td>—</td>
</tr>
<tr>
<td>Transfer to State</td>
<td></td>
</tr>
</tbody>
</table>
### 139—Office of Community and Industrial Development—Community Service

Acct. No. 8031

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$48,497,178</td>
</tr>
</tbody>
</table>

#### Personal Services
- Amount: $111,400

#### Annual Increment
- Amount: $1,116

#### Current Expenses
- Amount: $105,654

#### Equipment
- Amount: $2,000

#### To Local Entities
- Amount: $3,935,336

#### Total
- Amount: $4,155,506

### 140—Office of Community and Industrial Development Justice Assistance

Acct. No. 8032

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>To Local Entities—Total</td>
<td>$600,000</td>
</tr>
</tbody>
</table>

### 141—State Department of Education—Education Grant

Acct. No. 8242

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$40,344,744</td>
</tr>
</tbody>
</table>

#### Personal Services
- Amount: $947,717

#### Annual Increment
- Amount: $16,146

#### Current Expenses
- Amount: $496,255

#### Repairs and Alterations
- Amount: $100

#### Equipment
- Amount: $9,355

#### To Local Entities
- Amount: $38,875,171

### 142—State Health Department—Maternal and Child Health

Acct. No. 8502

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$13,000,000</td>
</tr>
</tbody>
</table>

#### Spending Units
- Amount: $13,000,000

#### Total
- Amount: $48,497,178
## Appropriations

**TO BE PAID FROM FEDERAL FUNDS**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$753,275</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$10,584</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$6,084,437</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$55,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$6,903,296</td>
</tr>
</tbody>
</table>

**143—State Health Department—Alcohol, Drug Abuse and Mental Health**

Acct. No. 8503

**TO BE PAID FROM FEDERAL FUNDS**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$404,794</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$4,543</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$4,584,871</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$25,800</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$5,020,008</td>
</tr>
</tbody>
</table>

**144—State Health Department—Preventive Health**

Acct. No. 8506

**TO BE PAID FROM FEDERAL FUNDS**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$3,456</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$1,067,724</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$16,340</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$1,440,823</td>
</tr>
</tbody>
</table>

**145—Department of Human Services—Energy Assistance**

Acct. No. 9147

**TO BE PAID FROM FEDERAL FUNDS**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
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<td>3</td>
<td>Current Expenses</td>
<td>$50,200</td>
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<tr>
<td>4</td>
<td>Social Security Matching</td>
<td>$85,800</td>
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<tr>
<td>5</td>
<td>Public Employees Retirement Matching</td>
<td>$114,000</td>
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### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>100,000</td>
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<tr>
<td>7</td>
<td>Energy Assistance</td>
<td>17,574,141</td>
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<tr>
<td>8</td>
<td>Social Services</td>
<td>1,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$20,185,111</td>
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</table>

**146—Department of Human Services—**

**Social Service**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>213,315</td>
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<td>3</td>
<td>Current Expenses</td>
<td>3,644,500</td>
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<td>4</td>
<td>Equipment</td>
<td>100,000</td>
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<td>5</td>
<td>Social Security Matching</td>
<td>860,000</td>
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<tr>
<td>6</td>
<td>Public Employees Retirement Matching</td>
<td>785,000</td>
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<tr>
<td>7</td>
<td>Public Employees Health Insurance</td>
<td>670,000</td>
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<tr>
<td>8</td>
<td>Social Services</td>
<td>7,308,375</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$23,000,000</td>
</tr>
</tbody>
</table>

### Sec. 10. Special revenue appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred eighty-seven, appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of chapter twelve, article two, section two of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of chapter twelve, articles two and three, and chapter five-a, article two of the code, unless the spending unit has filed with the state director of the budget, the state auditor and the legislative auditor prior to the beginning of each fiscal year:

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

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

### Sec. 11. State improvement fund appropria-
tions.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year one thousand nine hundred eighty-seven, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated State Improvement Fund.

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

Sec. 12. Specific funds and collection accounts.—A fund or collection account, which by law is dedicated to a specific use, is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account, and shall be expended according to the provisions of chapter twelve, article three of the code.

Sec. 13. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he shall issue his requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 14. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage
finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the state municipal bond commission as provided by chapter thirty-one, article eighteen, section twenty-b of the code, or in the funds of the state municipal bond commission because of the failure of any state agency for either general obligations or revenue bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the state municipal bond commission as may be necessary for these purposes.

The state municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 15. Appropriations to pay costs of publication of delinquent corporations.—There is hereby appropriated out of state fund, general revenue, out of funds not otherwise appropriated, to be paid upon requisition of the auditor and/or the governor, as the case may be, a sum sufficient to pay the cost of publication of delinquent corporations as provided by chapter eleven, article twelve, sections eighty-four and eighty-six of the code.

Sec. 16. Appropriations for local governments.—There are hereby appropriated for payment to counties, districts, and municipal corporations such amounts as will be necessary to pay taxes due counties, districts, and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.
Sec. 17. Total appropriations.—Where only a total sum is appropriated to a spending unit, the total sum shall include personal services, current expenses and capital outlay, except as otherwise provided in TITLE I, Sec. 3.

Sec. 18. General school fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with chapter eighteen, article nine-a, section sixteen of the code.

TITLE 3. ADMINISTRATION.
§1. Appropriations conditional.
§2. Constitutionality.

Section 1. Appropriations conditional.—The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government are conditioned upon the compliance by the spending unit with the requirements of chapter five-a, article two of the code.

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

Sec. 3. Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion of this act

*Clerk's Note: The Governor deleted all language appearing in Sec. 1, lines twelve through nineteen.
act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

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:

TITLE 2. APPROPRIATIONS.

Sec. 5. Awards for claims against the state.—There are hereby appropriated, for the remainder of the fiscal year 1985-86 and to remain in effect until June 30, 1987, from the funds as designated, in the amounts as specified and for the claimants as named in Enrolled House Bill 1871, acts, Legislature, regular session, 1986, crime victim compensation fund of $529,478.25 for payment of claims against the state.
There are hereby appropriated for the remainder of
the fiscal year 1985-86 and to remain in effect until June
30, 1987, from the funds as designated, in the amounts
as specified, and for the claimants as named in Enrolled
House Bill 1960 and 1961, acts, Legislature, regular
session, 1986 total general revenue funds of $632,699.04,
state road funds of $584,286.74, special revenue funds
of $18,666.94 and federal funds of $13,136.56 for
payments of claims against the state.

The purpose of this supplementary appropriation bill
is to supplement, amend and increase 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, and with
such increased amounts being available for payment
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
Ch. 32] APPROPRIATIONS 159

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—West Virginia Library Commission
5 Acct. No. 3500
6 7 Summersville Library Construction $ 300,000
7 11 Total $ 8,315,361
8
9 The purpose of this supplementary appropriation bill is
10 to supplement this account in the budget bill for fiscal
11 year 1986-87 by adding this new item and amount therefor
12 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—Public Service Commission—Consumer Advocate
4   Acct. No. 8295
5   TO BE PAID FROM SPECIAL REVENUE FUND
6   1   Personal Services .................................. $ 5,000
7   11  Total.................................................. $659,798

The purpose of this supplementary appropriation bill is to supplement and increase the “Personal Services” item in this account by $5,000 and with such amount being available for expenditure in fiscal year 1986-87 and after the effective date of this bill.
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 audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the division of archives and history should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the division of archives and history shall continue to exist until the first day of July, 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.]
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 institutions shall furnish to the commissioner of banking, at least twice each year and within fifteen days after his request therefor, a statement, verified by its president or secretary, and approved by three of its directors, in such form as may be prescribed by the commissioner of banking, showing in detail the actual financial condition and the amount of the assets and liabilities of such financial institution, and shall furnish such other information as to its business and affairs as the commissioner of banking may require, which reports, in the same form in which they are transmitted to the commissioner of banking, shall be printed and circulated among all of the stockholders of the financial institution: Provided, That if such financial institution accepts deposits, or holds public savings in any form or manner, its report shall also be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county 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.]
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 banking and financial institutions which shall consist of six members and the commissioner, who shall be chairman. The six members shall be appointed by the governor by and with the advice and consent of the Senate. Three of the members shall be executive officers of state banking institutions, of whom one shall be truly representative of such state banking institutions having assets not greater than twenty-five million dollars, one shall be truly representative of such state banking institutions having total assets greater than twenty-five million dollars but not greater than fifty million dollars, and one shall be truly representative of such banking institutions having total assets greater than fifty million dollars. One member shall be an executive officer of a financial institution other than a banking institution. Two members shall represent the public, neither of whom shall be an employee, officer, trustee, director or stockholder of any financial institution. No member shall hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity or any instrumentality or agency of any of the foregoing or with any political party.

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

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

(d) The board shall keep an accurate record of all its
proceedings and make certificates thereupon as may be
required by law. The commissioner shall make available,
necessary office space and secretarial and other assistance
as the board may reasonably require.

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 Mastrantonj)

[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
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-
proved the bylaws, and the association shall file with the commissioner of banking:

(A) A certified copy of the charter;

(B) Duly certified copies of the minutes of the meeting of the shareholders at which directors were elected, and of the first meeting of the directors at which officers were elected; and

(C) A list of the names of the directors and all officers, with their addresses.

(2) When the commissioner of banking is satisfied that such association has complied with all requirements of the law precedent to the exercise of the powers imposed by law, and it appears that such association is lawfully entitled to commence business, he shall give to such association a certificate of authority under his hand and official seal that such association is authorized to commence business.

(b) No building and loan association shall transact any business except such as is incidental or necessarily preliminary to its organization until it has been authorized by the commissioner of banking to do so. A building and loan association failing to organize and receive authority from the commissioner of banking to commence business within one year from the date of receiving its certificate of incorporation, shall cease to exist, and such certificate shall be null and void.

(c) Except as may otherwise be provided for in section seven-a of this article, no building and loan association or savings and loan company organized and operating under the provisions of this article shall engage in business at any place other than:

(1) Its principal office in this state; or

(2) Branch offices, already established at the time of the effective date of this section.

§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 sav-
(a) Except as authorized in this section, no savings and loan association organized under the laws of any other state or having its principal place of business in any other state may accept deposits or savings, or transact any other business normally associated with the operation of a savings and loan association of any kind, in this state, other than the lending of money.

(b) Notwithstanding any other provision of this code to the contrary, after the thirty-first day of December, one thousand nine hundred eighty-seven, a West Virginia building and loan association may acquire a savings and loan association, savings bank or savings and loan holding company having a principal place of business in another state. A savings and loan association, or a savings bank, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation pursuant to the National Housing Act of 1934, as amended, or savings and loan holding company with its principal place of business in another state may acquire a West Virginia building and loan association, if the commissioner of banking determines, in his discretion, that the laws of such other state in effect at the time the application for the proposed acquisition in this state is filed, permit a West Virginia building and loan association to acquire a savings and loan association having its principal place of business in such other state on terms that are, on the whole, substantially no more restrictive than those established under the provisions of this section. A savings and loan association or savings and loan holding company with its principal place of business in another state may not acquire a West Virginia building and loan association which has been in existence and operating for less than two years: Provided, That the commissioner of banking may approve the acquisition of ownership or control of a building and loan association which was newly organized under the provisions of this article, if such newly chartered building and loan association was organized
solely for the purpose of facilitating the acquisition of
a building and loan association that has been continu-
ously operating for more than two years. If the law of
such other state restricts entry to that state by a West
Virginia building and loan association, then the commis-
sioner of banking may similarly limit the authority
granted by this section for savings and loan associations
or savings and loan holding companies with their
principal places of business located in that other state
to effect acquisitions in this state.

(c) Any savings and loan holding company proposing
to acquire a West Virginia building and loan association
pursuant to this section shall comply with, and be
governed by, the regulation of holding companies
provided for in 12 U.S.C. §1730a, and the regulations
promulgated pursuant thereto.

(d) No application for approval of an acquisition
pursuant to the authority granted by this section may
be approved by the commissioner of banking if the
commissioner determines that such approval would
cause the applicant savings and loan association or
savings and loan holding company to control aggregate
total deposits in this state exceeding twenty percent of
the total deposits held by all financial institutions
located in this state as reported in the most recently
available reports of condition or similar reports filed
with state or federal authorities.

(e) Unless the shareholders of the West Virginia
building and loan association to be acquired have
approved an amendment to its articles of incorporation
or code of regulations or comparable document that
provides that this subsection shall not apply to such
West Virginia building and loan association, any
acquisition to be made pursuant to the authority granted
by this section which will result in the acquiring of
nonresident savings and loan association or savings and
loan holding company directly or indirectly owning or
controlling the West Virginia building and loan associ-
ation must be authorized by the affirmative vote of the
holders of not less than two thirds of the voting power
of the West Virginia building and loan association to be
(f) Any savings and loan association or savings and loan holding company acquiring a West Virginia building and loan association pursuant to the authority granted by this section shall file with the commissioner copies of the public portions of all regular and periodic reports such savings and loan association or savings and loan holding company is required to file with federal regulators under section 13 or 15(d) of the "Securities Exchange Act of 1934," 48 STAT. 894, 15 U. S. C. 78m or 78o(d), as amended. These reports shall be filed with the commissioner within fifteen days following the date they are filed in final form with the applicable regulator.

(g) As used in this section:

(1) "Acquire" or "acquisition" means any of the following transactions or actions:

(A) A merger, consolidation or combination of, or with, a savings and loan association, savings bank or a savings and loan holding company;

(B) The acquisition of the direct or indirect ownership or control of voting shares of a West Virginia building and loan association if, after such acquisition, the acquiring savings and loan association or savings and loan holding company will directly or indirectly own or control more than five percent of any class of voting shares of the West Virginia building and loan association, unless the commissioner determines, in his discretion, that the nature of the acquisition is such that it should not be subject to the limitations of this section;

(C) The direct or indirect acquisition of all or substantially all of the assets of a West Virginia building and loan association by a savings and loan association or a savings and loan holding company of another state; or

(D) The taking of any other action by a savings and loan association or a savings and loan holding company that results in the direct or indirect control of a West Virginia building and loan association.
(2) "Principal place of business" means, as to a savings and loan holding company, the state or jurisdiction in which the total deposits of all direct or indirect subsidiaries of the savings and loan holding company and any other company that has control of the savings and loan holding company are the largest, as shown in the most recent report of condition or similar report filed by such subsidiaries with state or federal authorities; and, as to a savings and loan association, the state or jurisdiction in which its total deposits and those of all its subsidiaries, if any, are the largest, as shown in the most recent report of condition or similar report filed by the savings and loan association and its subsidiaries with state or federal authorities.

(3) "Savings and loan holding company" means any company which is a savings and loan holding company as defined in the federal savings and loan holding company act, 12 U.S.C. §1730a(a)(1) (D), (E) or (F), or which will become such an approved savings and loan holding company prior to or upon completion of the acquisition to be made pursuant to the authority granted by this section.

(4) "West Virginia building and loan association" means a building and loan association or a savings and loan company, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, pursuant to the National Housing Act of 1934, as amended and chartered under the provisions of this article.

(h)(1) When the commissioner of banking considers it necessary or appropriate, he may examine any savings and loan association or a savings and loan company that has acquired or has an application pending to acquire a West Virginia building and loan association pursuant to the authority granted by subsection (b) of this section. The cost of an examination, if in excess of the initial fee, shall be assessed against and paid by the savings and loan association or savings and loan holding company examined. The commissioner may request the savings and loan association or savings and loan holding company to be examined pursuant to
this subsection to advance the estimated cost of such examination.

(2) The commissioner may enter into cooperative agreements with other state and federal savings and loan regulatory authorities to facilitate the examination of any savings and loan association or savings and loan holding company that has acquired or has an application pending to acquire a West Virginia building and loan association pursuant to the authority granted by subsection (b) of this section. The commissioner may accept reports of examinations and other records from such other authorities in lieu of conducting his own examination of such savings and loan association or savings and loan holding companies. The commissioner may take any action jointly with other regulatory agencies having concurrent jurisdiction over such savings and loan association or savings and loan holding companies or may take action independently in order to carry out his responsibilities under subsection (b) of this section.

(3) When the commissioner considers it necessary, he may require any savings and loan association or savings and loan holding company that has acquired a West Virginia building and loan association pursuant to the authority granted by subsection (b) of this section to submit such reports to the commissioner as he determines to be necessary or appropriate for the purpose of 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.

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

(1) Such notice shall be given to the financial institution or person with respect to whom the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board, but shall not be held less than ten or more than thirty days after such notice is given. A hearing may be continued by the board on its own motion or for good cause shown.

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

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

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

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

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

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

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

(h) Whenever the board shall find that the financial
condition of a state banking institution, national
association or bank holding company constitutes an
imminent peril to its depositors, savings account
holders, other customers or creditors, it may forthwith
without compliance with the provisions of section four
or section seven, article eight-a of this chapter and
without notice of hearing enter an order approving or
disapproving an application by an existing bank holding
company or by an organizing bank holding company to
acquire in whole or in part, directly or indirectly, such
state banking institution, national association or bank
holding company. Immediately upon the entry of such
order, certified copies thereof shall be served upon all
persons affected thereby at the earliest practicable time.

(i) Definitions:

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

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

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

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

§31A-8-12. Procedure for authorization of branch banks; penalties for violation of section.

(a) No banking institution shall engage in business at any place other than at its principal office in this state, at a branch bank in this state permitted by this section as a customer bank communication terminal permitted by section twelve-b of this article or at any loan origination office permitted by section twelve-c of this article.

Any banking institution which on January one, one thousand nine hundred eighty-four, was authorized to operate an off-premise walk-in or drive-in facility, pursuant to the law then in effect, may, as of the seventh day of June, one thousand nine hundred eighty-four, operate such facility as a branch bank and it shall not be necessary, for the continued operation of such branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of this section and subdivision (6), subsection (b), section two, article three of this chapter.

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

(c) A banking institution may establish branch banks either by:

(1) The construction, lease or acquisition of branch bank facilities as follows:

(A) After the seventh of June, one thousand nine hundred eighty-four, within the county in which that
banking institution's principal office is located or within
the county in which that banking institution had prior
to January first, one thousand nine hundred eighty-four,
established a branch bank, pursuant to subdivision (2)
of this subsection; and

(B) After the thirty-first of December, one thousand
nine hundred eighty-six, within any county in this state;
or

(2) The purchase of the business and assets and
assumption of the liabilities of, or merger or consolida-
tion with, another banking institution.

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

(e) The principal office of a banking institution as of
the seventh day of June, one thousand nine hundred
eighty-four, shall continue to be the principal office of
such banking institution for purposes of establishing
branch banks under this section, notwithstanding any
subsequent change in the location of such banking
institution's principal office.

(f) Any banking institution which is authorized to
establish branch banks pursuant to this section may
provide the same banking services and exercise the
same powers at each such branch bank as may be
provided and exercised at its principal banking house.

(g) The board shall, upon receipt of any application
to establish a branch bank, provide notice of such
application to all banking institutions. A banking
institution may, within ten days after receipt of such
notice, file a petition to intervene and shall, if it so files
such petition, thereupon become a party to any hearing
relating thereto before the board.

(h) The commissioner shall prescribe the form of the
application for a branch bank and shall collect an
examination and investigation fee of one thousand dollars for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility, and two thousand five hundred dollars for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with another banking institution. The board shall complete the examination and investigation within ninety days from the date on which such application and fee are received, unless the board request in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution, in which event such ninety-day period shall be extended for an additional period of thirty days plus the number of days between the date of such request and the date such additional information and disclosures are received.

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

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

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

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

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

(1) Public convenience and advantage will be promoted by the establishment of the proposed branch bank;

(2) Local conditions assure reasonable promise of successful operation of the proposed branch bank and of those banks and branches thereof already established in the community;

(3) Suitable physical facilities will be provided for the branch bank;

(4) The applicant state-chartered banking institution satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board may from time to time establish by regulation;

(5) The establishment of the proposed branch bank would not result in a monopoly, nor be in furtherance of any combination or conspiracy to monopolize the business of banking in any section of this state; and

(6) The establishment of the proposed branch bank would not have the effect in any section of the state of substantially lessening competition, nor tend to create a monopoly or in any other manner be in restraint of trade, unless the anticompetitive effects of the establishment of that proposed branch bank are clearly outweighed in the public interest by the probable effect of
the establishment of the proposed branch bank in
meeting the convenience and needs of the community to
be served by that proposed branch bank.

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

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

(m) Any violation of any provision of this section shall
constitute a misdemeanor offense punishable by appli-
cable penalties as provided in section fifteen, article
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.

(a) Unless an order approving such action has been
entered by the board, it is unlawful, prior to one
hundred twenty days following the date of the submis-
sion to the board of complete, true and accurate copies
of the reports required under federal laws or regulations
pursuant to Title 12, United States Code, §§1841-1850
(being the act of Congress entitled the Bank Holding
Company Act of 1956, as amended), and the payment of an examination and investigation fee to the board of two thousand five hundred dollars:

(1) For any action to be taken that causes any company to become a bank holding company;

(2) For any action to be taken that causes any bank to become a subsidiary of a bank holding company;

(3) For any bank holding company to acquire direct or indirect ownership or control of any shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than five percent of the voting shares of such bank;

(4) For any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank;

(5) For any bank holding company to merge or consolidate with any other bank holding company; or

(6) For any bank holding company to take any action which would violate the Federal Bank Holding Company Act.

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

(1) Shares acquired by a bank:

(A) In good faith in a fiduciary capacity, except where shares are held under a trust that constitutes a company as defined in section two of this article and except as provided in subdivisions (2) and (3), subsection (b), section three of this article; or

(B) In the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the seventh day of June, one thousand nine hundred eighty-four, in securing or collecting any such previously contracted debt shall be disposed of within a period of five years from the date on which they were acquired; or

(2) Additional shares acquired by a bank holding company in a bank in which such bank holding company
owned or controlled a majority of the voting shares prior to such acquisition. For the purpose of the preceding sentence, bank shares acquired after the seventh day of June, one thousand nine hundred eighty-four, shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior notice to the board if the board, upon notice and submission of information in form and content as it shall approve, filed within ninety days after the shares are acquired, approved retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within five years after issuance of the order of disapproval.

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

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

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

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

(d) Notwithstanding any other provision of law, no bank holding company, or any other company, shall establish, acquire or control any banking institution as defined in section three of this article, when said banking institution does not both (i) accept deposits that the depositor has a legal right to withdraw on demand and (ii) engage in the business of making commercial loans.

(e) Nothing contained in this section shall affect the obligation of any person or company to comply with the provisions of any order of any court or the commissioner entered prior to the seventh day of June, one thousand nine hundred eighty-four.

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

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

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

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

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

(f) The commissioner of banking shall charge and collect from each bank holding company and pay into a special revenue account in the state treasury for the department of banking an annual assessment payable on the last day of January computed upon the total deposits in this state of the bank holding company contained in the consolidated financial statement as of the last business day in December of the previous year as is set out in section eight, article two, chapter thirty-one-a of this code. The payment of such registration fee shall be accompanied by a report on forms prescribed by the commissioner.

§31A-8A-7. Acquisition of state bank or holding company by foreign bank; reciprocity; authority of the commissioner and of the board.
(a) Except as authorized in this section, no banking institution incorporated under the laws of any other state or having its principal place of business in any other state may receive deposits or transact any banking business of any kind in this state other than the lending of money.

(b) Upon enactment, a bank holding company with its principal place of business in another state may establish electronic data processing facilities and credit card processing facilities in West Virginia.

(c) After the thirty-first day of December, one thousand nine hundred eighty-seven, a bank holding company with its principal place of business in another state may acquire a West Virginia bank or West Virginia bank holding company if the board determines in its discretion that the laws of such other state, as in effect at the time the application referred to in subsection (d) of this section, permits a West Virginia bank holding company to acquire a bank or bank holding company having its principal place of business in such other state on terms that are, on the whole, substantially no more restrictive than those established under this section and if the West Virginia bank or all subsidiaries of the West Virginia bank holding company to be acquired have, been in operation for two years or more. The board may approve the acquisition of all or substantially all of the shares of a bank newly organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating for at least two years. If the law of such other state restricts entry by West Virginia bank holding companies to that state, then the board may similarly limit the authority granted by this section for bank holding companies with their principal places of business located in that state.

In no case may this section be construed to permit the merger, combination or consolidation of a West Virginia bank with or into a bank the principal place of business of which is not in this state.

(d) Any bank holding company proposing to acquire
a West Virginia bank or West Virginia bank holding company pursuant to this section shall comply with, and be governed by, the procedures and requirements contained in section four of this article.

(e) No application for approval of an acquisition pursuant to the authority granted by this section may be approved by the board if the board determines that such approval would cause the applicant bank holding company to control aggregate total deposits in this state exceeding twenty percent of the total deposits held by all financial institutions located in this state as reported in the most recently available reports of condition or similar reports filed with state or federal authorities.

(f) Unless the shareholders of the West Virginia bank or West Virginia bank holding company to be acquired have approved an amendment to its articles of incorporation or code of regulations or comparable document that provides that this subsection shall not apply to such West Virginia bank or West Virginia bank holding company, any acquisition to be made pursuant to the authority granted by this section which will result in the acquiring nonresident bank holding company directly or indirectly owning or controlling the West Virginia bank or West Virginia bank holding company must be authorized by the affirmative vote of the holders of not less than two thirds of the voting power of the West Virginia bank or West Virginia bank holding company to be acquired.

(g) Any bank holding company acquiring a bank or bank holding company pursuant to the authority granted by this section shall file with the commissioner copies of the public portions of all regular and periodic reports such bank holding company is required to file with federal regulators and under section 13 or 15(d) of the "Securities Exchange Act of 1934," 48 STAT. 894, 15 U.S.C. 78m or 78o(d), as amended. These reports shall be filed with the commissioner within fifteen days following the date they are filed in final form with the applicable regulator.

(h) As used in this section:
(1) “Acquire” or “acquisition” means any of the following transactions or actions:

(A) A merger, consolidation or combination of, or with, a West Virginia bank holding company;

(B) The acquisition of the direct or indirect ownership or control of voting shares of a West Virginia bank holding company or a West Virginia bank if, after such acquisition, the acquiring bank holding company will directly or indirectly own or control more than five percent of any class of voting shares of the West Virginia bank or West Virginia bank holding company unless the board determines, in its discretion, that the nature of the acquisition is such that it should not be subject to the limitations of this section;

(C) The direct or indirect acquisition of all or substantially all of the assets of a West Virginia bank or West Virginia bank holding company by a bank holding company;

(D) The taking of any other action by a bank holding company that results in the direct or indirect control of a West Virginia bank or West Virginia bank holding company.

(2) “Bank holding company” means any company which is a bank holding company as defined in this article, or which will become such an approved bank holding company prior to or upon completion of the acquisition to be made pursuant to the authority granted by this section.

(3) “Electronic data processing facilities and credit card processing facilities” means facilities established only for the purpose of processing accounts and or processing transactions relating to the issuance of credit cards.

(4) “Principal place of business” means, as to a bank holding company, the state or jurisdiction in which the total deposits of all direct and indirect banking subsidiaries of the bank holding company and any other company that has control of the bank holding company are the largest, as shown in the most recent report of
condition or similar report filed by such banking
subsidiaries with state or federal authorities; and, as to
a bank, the state or jurisdiction in which its total
deposits and those of all its banking subsidiaries, if any,
are the largest, as shown in the most recent report of
condition or similar report filed by the bank and its
banking subsidiaries with state or federal authorities.

(5) "West Virginia bank" means a bank incorporated
under the laws of this state or a national banking
association the principal place of business of which is in
this state.

(6) "West Virginia bank holding company" means a
bank holding company which owns or controls one or
more West Virginia banks and has its principal place
of business in this state.

(i) (1) When the commissioner of banking considers it
necessary or appropriate, he may examine any bank
holding company that has acquired or has an application
pending to acquire a West Virginia bank or West
Virginia bank holding company pursuant to the author-
ity granted by subsection (c) of this section. The cost of
an examination if in excess of the initial fee, shall be
assessed against and paid by the bank holding company
examined. The commissioner may request the bank
holding company to be examined pursuant to this
subsection to advance the estimated cost of such
examination.

(2) The commissioner may enter into cooperative
agreements with other state and federal bank regula-
tory authorities to facilitate the examination of any bank
holding company that has acquired or has an application
pending to acquire a West Virginia bank or West
Virginia bank holding company pursuant to the author-
ity granted by subsection (c) of this section. The
commissioner may accept reports of examinations and
other records from such other authorities in lieu of
conducting his own examination of such bank holding
companies. The commissioner may take any action
jointly with other regulatory agencies having concurrent
jurisdiction over such bank holding companies or may
take action independently in order to carry out his responsibilities under subsection (c) of this section.

(3) When the commissioner considers it necessary, he may require any bank holding company that has acquired a West Virginia bank or West Virginia bank holding company pursuant to the authority granted by subsection (c) of this section to submit such reports to the commissioner as he determines to be necessary or appropriate for the purpose of carrying out his responsibilities.

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.
§11-16-15. 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 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 the policy of this state that it is in the public interest to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of the beverages regulated by this article within this state and that, therefore, the provisions of this article are a necessary, proper and valid exercise of the police powers of this state and are intended for the protection of the public safety, welfare, health, peace and morals and are further intended to eliminate, or to minimize to the extent practicable, the evils attendant to the unregulated, unlicensed and unlawful manufacture, sale, distribution, transportation, storage and consumption of such beverages and are further intended to promote temperance in the use and
consumption thereof. In order to further these ends, the provisions of this article and of the rules and regulations promulgated pursuant thereto, shall be construed so that the accomplishment of these stated purposes may be effectuated.

§11-16-3. Definitions.

For the purpose of this article, except where the context clearly requires differently:

(1) "Brewer" or "manufacturer" shall mean any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer for sale at wholesale to any licensed distributor.

(2) "Commissioner" shall mean the West Virginia nonintoxicating beer commissioner.

(3) "Distributor" shall mean and include any person jobbing or distributing nonintoxicating beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state.

(4) "Nonintoxicating beer" shall mean all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and containing at least one half of one percent alcohol by volume, but not more than four and two-tenths percent of alcohol by weight, or six percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

(5) "Original container" shall mean the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

(6) "Person" shall mean and include an individual, firm, partnership, limited partnership, association or corporation.

(7) "Retailer" shall mean any person selling, serving or
otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, any malt cooler, at his established and licensed place of business.

§11-16-4. Office of nonintoxicating beer commissioner; deputies and agents; bonds; administration and enforcement expenses.

(a) The office of the independent administrator known as the "West Virginia Nonintoxicating Beer Commissioner" is hereby continued and the administration of this article is vested in and shall be exercised by said commissioner, to whom is hereby given all necessary power and authority in the premises.

All acts heretofore performed by the tax commissioner under previous proceedings of this article are hereby again ratified and confirmed, and the commissioner shall succeed to the same position previously maintained by the tax commissioner in all proceedings and official acts instituted and perfected under the provisions of this article prior to the creation of the office of commissioner in the year one thousand nine hundred thirty-seven. The commissioner shall be appointed by the governor with the advice and consent of the Senate. Except as may be provided in section two-a, article seven, chapter six of this code, the term of office for such commissioner shall be six years from the date of his or her appointment and until his or her successor shall have been appointed and qualified. The commissioner shall receive the annual salary as provided in said section two-a, article seven, chapter six of this code.

(b) The commissioner, at the time of his or her appointment and qualification, shall be a citizen of the United States and a resident of the state of West Virginia and shall have been a qualified voter in the state for a period of at least one year next preceding his or her appointment and shall be not less than thirty years of age. No commissioner, during his or her period of service as such, shall hold any other office under the laws of this state or of the United States.

(c) The commissioner, with the consent of the governor, shall appoint two deputy commissioners both of whom shall have the same qualifications as are required of the
commissioner. One deputy commissioner shall be in charge
of administration and the other deputy commissioner shall
be in charge of law enforcement. The deputy commissioner
of administration, in the absence of the commissioner, shall
exercise all the powers of the commissioner and generally
shall exercise such powers as are delegated to him or her by
the commissioner. The deputy commissioner of law
enforcement shall be, in the absence of the commissioner,
responsible for and exercise all the powers of the
commissioner in respect to law enforcement and regulation
and shall generally exercise such powers as are delegated to
him or her by the commissioner.

(d) Before entering upon the duties of their respective
offices, the commissioner and the deputy commissioner
shall execute and file with the state treasurer a penal bond
in such sum as shall be fixed by the governor, but the
amount of such bond shall not be less than five thousand
dollars. Penal bonds in such penal sums as shall be fixed by
the governor likewise shall be executed and filed with the
state treasurer by such employees of the commissioner as
the commissioner, with the consent of the governor, shall
prescribe. No such bond of any employee handling moneys
collected by the commissioner under the provisions of this
article shall be less than five thousand dollars. All such
bonds shall be payable to the state of West Virginia and
shall be conditioned for the faithful performance of the
duties imposed by law or lawful authority upon the
commissioner, deputy commissioners or employees, and
further conditioned that the person bonded will not
knowingly violate the provisions of any act, rule or
regulation relating to the manufacture, sale, distribution or
transportation of alcohol, alcoholic liquors or intoxicating
beer. All bonds required to be given under this section,
before being accepted by the state treasurer, shall be
approved by the attorney general and all such bonds shall
be given with surety approved by the attorney general. The
cost of such bond shall be borne by the commissioner as part
of his operating expense.

(e) In addition to the service of the deputy
commissioners hereinabove provided for, the commissioner
shall appoint an adequate number of competent persons to
serve as agents of the commissioner for the purpose of
keeping all necessary accounts and records required under the provisions of this article; investigating the books, accounts, records and other papers of retailers, distributors and brewers; investigating applicants for license and the places of business of retailers, distributors and brewers; procuring evidence with respect to violations of the provisions of this article, and particularly for use at hearings held by the commissioner and on proceedings instituted in court for the purpose of revoking or suspending licenses hereunder; and such agents shall perform such other duties as the commissioner may direct. Such agents shall have the right to enter any licensed premises in the state in the performance of their duties at any hour of the day or night when beer is being sold or consumed on such licensed premises. Refusal by any licensee or by any employee of a licensee to permit such agents to enter the licensed premises shall be an additional cause for revocation or suspension of the license of such licensee by the commissioner. The compensation of such deputy commissioners, employees and agents shall be fixed by the commissioner.

(f) Services rendered the state by clerks, sheriffs, commissioners in chancery and special commissioners, designated by the court, and court reporters and stenographers performing services for said commissioner and fees of witnesses summoned on behalf of the state in proceedings to revoke or suspend retailer's licenses, shall be treated as part of the expenses of administration and enforcement, and such officers and said other persons shall be paid the same fees and charges as would be chargeable for like services performed for an individual; and the compensation of such clerks, sheriffs and other persons shall be paid out of the amount allocated for the expense of administration enforcement, after the amount of such fees and other charges shall be certified by the court to the auditor.

§11-16-5. State license required; alcoholic content of beer manufactured for sale without state.

No person shall manufacture, sell, possess for sale, transport or distribute nonintoxicating beer except in accordance with the provisions of this article, and after first
obtaining a state license therefor, as provided in this article. Nothing contained in this article shall prohibit any brewer located within the state from manufacturing or transporting for sale without the state beer of an alcoholic 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.

(a) No person shall be licensed in more than one capacity under the terms of this article, and there shall be no connection whatsoever between any retailer or distributor or brewer, and no person shall be interested directly or indirectly through the ownership of corporate stock, membership in a partnership, or in any other way in the business of a retailer, if such person is at the same time interested in the business of a brewer or distributor. A brewer whose place of brewing or manufacture is located within the state of West Virginia may act as distributor of his own product from such brewery, place of manufacture or bottling, but must have a distributor's license for distribution from a place other than the place of brewing or manufacture. A resident brewer or distributor may sell to a consumer for personal use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the original containers.

(b) It shall be unlawful for any brewer, manufacturer or distributor to assist any retailer or for any retailer to accept assistance from any brewer, manufacturer or distributor any gifts or loans or forebearance of money or property of any kind, nature or description, or other thing of value or by the giving of any rebates or discounts of any kind whatsoever except as may be permitted by rule, regulation, or order promulgated by the commissioner in accordance with this article.

§11-16-7. License not transferable; change of location.

No license issued under the provisions of this article shall be transferred to another person, nor shall the location of the premises to which the license relates be changed without the written consent of the commissioner, which 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.

(a) A license may be issued by the commissioner to any person who submits an application therefor, accompanied by a license fee, and, where required, a bond, stating under oath:

1 (1) The name and residence of the applicant, the duration of such residency, that the applicant has been a resident of the state for a period of two years next preceding the date of the application and that the applicant is twenty-one years of age. If the applicant is a firm, association, partnership, limited partnership or corporation, the application shall include the residence of the members or officers for a period of two years next preceding the date of such application: Provided, That if any person, firm, partnership, limited partnership, association or corporation applies for a license as a distributor, such person, or in the case of a firm, partnership, limited partnership or association, the members or officers thereof shall state under oath that each has been a bona fide resident of the state for four years preceding the date of such application;

2 (2) The place of birth of applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized or authorized to do business under the laws of the state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership or limited partnership, the place of birth of each member of the firm, association, partnership or limited partnership, and that each member is a citizen of the United States and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application: Provided, That the requirements as to residence shall not apply to the officers of a corporation which shall apply for a retailer's license, but the officers, agent or employee who shall manage and be in charge of the licensed premises shall possess all of the qualifications required of an individual applicant for a retailer's license, including the requirement as to residence;
(3) The particular place for which the license is desired and a detailed description thereof;
(4) The name of the owner of the building and, if the owner is not the applicant, that such applicant is the actual and bona fide lessee of the premises;
(5) That the place or building in which is proposed to do business conforms to all laws of health, fire and zoning regulations applicable thereto, and is a safe and proper place or building, and is not within three hundred feet of any school or church, measured from front door to front door, along the street or streets: Provided, That this requirement shall not apply to a Class B license, or to any place now occupied by a beer licensee, so long as it is continuously so occupied: Provided, however, That the prohibition against locating any such proposed business in a place or building within three hundred feet of any school shall not apply to any college or university that has notified the commissioner, in writing, that it has no objection to the location of any such proposed business in a place or building within three hundred feet of such college or university;
(6) That the applicant has never been convicted of any felony, nor of any violation of the liquor laws, either federal or state;
(7) That the applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed, and that no other person shall be in any manner pecuniarily interested therein during the continuance of the license; and
(8) That the applicant has not during five years next immediately preceding the date of said application had a nonintoxicating beer license revoked;
(b) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance, and in the event any applicant fails to qualify under the same, license shall be refused. In addition to the information furnished in any application, the commissioner may make such addition and independent investigation of each applicant, and of the place to be occupied, as deemed necessary or advisable; and for this reason each and all applications, with license fee and bond, must be filed thirty days prior to the beginning of any fiscal year, and if
application is for an unexpired portion of any fiscal year, issuance of license may be withheld for such reasonable time as necessary for investigation.

(c) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner shall be of the opinion:

(1) That the applicant is not a suitable person to be licensed;

(2) That the place to be occupied by the applicant is not a suitable place; or is within three hundred feet of any school or church, measured from front door to front door along the street or streets: Provided, That this requirement shall not apply to Class B licensee, or to any place now occupied by a beer licensee, so long as it is continuously so occupied: Provided, however, That the prohibition against locating any such place to be occupied by an applicant within three hundred feet of any school shall not apply to any college or university that has notified the commissioner, in writing, that it has no objection to the location of any such place within three hundred feet of such college or university; or

(3) That the license should not be issued for reason of 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.

(a) There is hereby levied and imposed an annual license tax upon all dealers in and of nonintoxicating beer as defined by this article, which license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and, if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year as follows:

(1) Retail dealers shall be divided into two classes, Class A and Class B. In the case of a Class A retail dealer the license fee shall be one hundred fifty dollars for each place of business; the license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately precedent the date of application, shall be one hundred fifty dollars: Provided, That railroads operating in this state
may dispense nonintoxicating beer upon payment of an
annual license tax of ten dollars for each dining, club or
buffet car in which the same is dispensed.
Class A licenses issued for railroad dining, club or buffet
cars, as herein provided, shall authorize the licensee to sell
nonintoxicating beer at retail for consumption only on the
licensed premises where sold. All other Class A licenses
shall authorize the licensee to sell nonintoxicating beer at
retail for consumption on or off the licensed premises.
In the case of a Class B retailer, the fee for a Class B
license authorizing the sale of both chilled and unchilled
beer shall be one hundred fifty dollars for each place of
business. A Class B license shall authorize the licensee to
sell nonintoxicating beer at retail in bottles, cans or other
sealed containers only, and only for consumption off the
licensed premises. Sales under this license to any person at
any one time must be in less quantities than five gallons:
Provided, That a Class B retailer may sell to a consumer, for
personal use and not for resale, draught beer in quantities of
one-eighth, one-fourth and one-half barrels in the original
containers. Such license may be issued only to the
proprietor or owner of a grocery store. For the purpose of
this article, the term “grocery store” means and includes
any retail establishment commonly known as a grocery
store or delicatessen, where food or food products are sold
for consumption off the premises, and shall include and
mean a separate and segregated portion of any other retail
store which is dedicated solely to the sale of food, food
products and supplies for the table for consumption off the
premises. The commissioner may promulgate rules and
regulations necessary to carry this provision into effect.
In the case of distributors, the license fee shall be one
thousand dollars for each place of business.
In the case of a brewer with its principal place of
business located in this state, the license fee shall be one
thousand five hundred dollars for each place of
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.
(a) A brewer's license shall be issued by the commissioner to a foreign corporation which submits an application therefor accompanied by the license fee hereinafter prescribed, the bond required by section nine of this article, a certified copy of the certificate of authority issued by the secretary of state authorizing such foreign corporation to transact business in the state and a certified copy of its most recent corporation charter. Such application shall be verified and shall state:

(1) The name of the corporation and the state under the laws of which it is incorporated;

(2) The date of incorporation;

(3) The address of the principal office of the corporation;

(4) The names and respective addresses of the directors and officers of the corporation;

(5) The date that such foreign corporation qualified to transact business in this state; and

(6) Such other information as the commissioner, by rule or regulation, may require.

(b) So long as the foreign corporation remains qualified to transact business in this state so that the secretary of state can accept service of notice and process for such foreign corporation, then, notwithstanding any other provision of this article to the contrary, none of the officers and directors of such foreign corporation need be residents of this state.

(c) The license fee for a brewer's license for a foreign corporation selling any nonintoxicating beer product within this state, whether or not its principal place of business be located in this state, shall be one thousand five hundred dollars per annum. The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year and, if granted for a lesser period, the same shall be prorated semiannually in proportion to the remainder of the fiscal year.

(d) All sales representatives for any brewer or manufacturer of nonintoxicating beer shall be issued a permit by the commissioner. The permit fee for each sales representative of or employed by a licensed brewer or manufacturer shall be fifty dollars.

(e) The licenses and permits issued under the provisions
of this section shall be renewed annually upon application
for renewal on a form prescribed by the commissioner and
payment of the annual license fee.
(f) If at any time such foreign corporation is no longer
qualified to transact business in this state, the secretary of
state shall notify the commissioner of such fact and the
commissioner shall thereupon suspend the brewer's license
issued to such foreign corporation until such time as such
foreign corporation has again qualified to transact business
in this state and has otherwise complied with the provisions
of this section.
(g) Notwithstanding any other provision of this article
to the contrary, any corporation issued a brewer's license
under the provisions of this article shall not engage in the
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
designated a Class S license, for the retail sale of
nonintoxicating beer at a festival or fair, provided the
festival or fair is sponsored or endorsed by the governing
body of either the municipality or of the county wherein the
festival or fair is to be conducted. Such special license shall
be issued for a term of no longer than ten consecutive days
and the fee therefor shall be two hundred fifty dollars
regardless of the term of the license. The application for
such license shall contain such information as the
commissioner may require and shall be submitted to the
commissioner at least thirty days prior to the first day upon
which nonintoxicating beer is to be sold at such festival or
fair.

A license issued under the provisions of this section and
the licensee holding such license shall be subject to all other
provisions of this article and the rules, regulations and
orders of the commissioner relating to such special license:

Provided, That the commissioner may, by rule, regulation
or order, provide for certain waivers or exceptions with
respect to such provisions, rules, regulations or order, as the
circumstances of each such festival or fair may require,
including, without limitation, the right to revoke or
suspend any license issued pursuant to this section prior to any notice or hearing, notwithstanding the provisions of section twenty-four of this article: Provided, however, That under no circumstances shall the provisions of subdivision (1), (2) or (3), subsection (a), section eighteen of this article, be waived nor shall any exception be granted with respect 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.

(a) In addition to furnishing the information required by this article, each brewer or distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, conditioned for the payment of any and all additional taxes accruing during the period of such license, and conditioned further for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the state of West Virginia generally relating to the sale, transportation, storage and distribution of nonintoxicating beer, which said bonds shall be forfeited to the state upon the revocation of the license of any such brewer or distributor. The amount of such bond, in the case of a resident brewer, shall be not less than five thousand dollars, nor more than ten thousand dollars, and in the case of a distributor, not less than two thousand dollars, nor more than five thousand dollars for each place of business licensed and conducted within the state, the amount of such bond, between the minimum and maximum amounts, to be determined in the discretion of the commissioner. In the case of brewers shipping nonintoxicating beer into the state, any brewer must also furnish a bond in a penalty of not less than five thousand dollars nor more than twenty-five thousand dollars conditioned as hereinabove in this subsection provided and any bond furnished pursuant hereto shall be forfeited to the state in the full amount of said bond upon revocation of license of any such brewer or distributor. Such money received by the state shall be
credited to the state fund, general revenue.

(b) Each Class A retail dealer, in addition to furnishing the information required by this article, shall furnish as prerequisite to obtaining a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, in the amount not less than five hundred dollars, nor more than one thousand dollars, within the discretion of the commissioner. All such bonds shall be conditioned for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the state of West Virginia generally relating to the distribution, sale and dispensing of nonintoxicating beer, and shall be forfeited to the state in the full amount of said bond upon the revocation of the license of any such retail dealer. Such money received by the state shall be credited to the state fund, general revenue.

c) Upon the revocation of the license of any Class A retail dealer by the commissioner or by any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the prosecuting attorney of the county wherein such retail dealer's place of business is located, or the prosecuting attorney of the county wherein the licensee resides, of such revocation, and, upon receipt of said notice, it shall be the duty of such prosecuting attorney forthwith to institute appropriate proceedings for the collection of the full amount of said bond. Upon request of such prosecuting attorney, the commissioner shall deliver the bond to him. Willful refusal without just cause therefor by the prosecuting attorney to perform said duty hereby imposed shall subject him to removal from office by the circuit court of the county for which said prosecuting attorney was elected upon proper proceedings and proof in the manner provided by law.


(a) There is hereby levied and imposed, in addition to the license taxes provided for in this article, a tax of five dollars and fifty cents on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold in barrels, bottles or other
containers, and a like tax is hereby levied and imposed upon
all nonintoxicating beer manufactured outside of this state
and brought into this state for sale within this state; but no
nonintoxicating beer manufactured, sold or distributed in
this state is subject to more than one barrel tax. The brewer
manufacturing or producing nonintoxicating beer within
this state for sale within this state shall pay the barrel tax on
such nonintoxicating beer, and, except as provided
otherwise, the distributor who is the original consignee of
nonintoxicating beer manufactured or produced outside of
this state, or who brings such nonintoxicating beer into this
state, shall pay the barrel tax on such nonintoxicating beer
manufactured or produced outside of this state.

(b) On or before the tenth day of each month during the
license period, every brewer who manufactures or produces
nonintoxicating beer within this state shall file a report in
writing, under oath, to the commissioner, in the form
prescribed by the commissioner, stating its total estimated
sales of nonintoxicating beer to distributors within this
state during that month, and at the same time shall pay the
tax levied by this article on such estimated monthly sales.

On or before the tenth day of each month during the license
period, every distributor who is the original consignee of
nonintoxicating beer manufactured or produced outside
this state or who brings such beer into this state for sale
shall file a report in writing, under oath, to the
commissioner, in the form prescribed by the commissioner,
stating its total estimated purchases of such
nonintoxicating beer during that month, and at the same
time shall pay the tax thereon levied by this article for such
estimated monthly purchase: Provided, That the
commissioner may allow, or require, a brewer who
manufactures or produces nonintoxicating beer outside
this state to file the required report and pay the required tax
on behalf of its distributor or distributors. Any brewer or
distributor who files a report under this subsection may
adjust its monthly estimated sales or purchases report or
reports by filing amended reports by the twenty-fifth day of
the reporting month.

(c) Every brewer or distributor who files a report under
subsection (b) of this section shall file a final monthly report
of said sales or purchases, in a form and at a time prescribed
by the commissioner, stating actual nonintoxicating beer 
sales and purchases and other information which 
commissioner may require, and shall include a remittance 
for any barrel tax owed for actual sales or purchases made 
in excess of the amount estimated for that month.
(d) Any brewer or distributor who files a report 
pursuant to subsection (b) of this section reflecting an 
underestimation of twenty-five percent or more of actual 
sales or purchases of nonintoxicating beer as shown by the 
report filed pursuant to subsection (c) of this section shall 
be assessed a penalty of one percent of the total taxes due in 
such prior month.
(e) Brewers and distributors shall keep all records 
which relate to the sale or purchase in this state of 
nonintoxicating beer for a period of three years unless 
written approval for earlier disposal is granted by the 
commissioner.
1 If any person whose report to the commissioner as 
provided for in section thirteen of this article shows him to 
be liable for any unpaid taxes, and who shall fail to pay the 
same as provided herein, the commissioner shall be 
authorized to distrain immediately therefor, or collect the 
amount thereof in any appropriate legal proceeding 
instituted in the circuit court of Kanawha County, West 
Virginia, or in the circuit court of the county wherein the 
principal place of business of such person is located, as the 
commissioner may deem appropriate, and in addition the 
state shall have a lien on all the property of such person for 
the full amount of the unpaid tax as ascertained by the 
commissioner; and in addition the commissioner may 
revoke the license of any such person failing to pay any such 
tax.
§11-16-15. Records of brewer, manufacturer or distributor; 
collection of unpaid tax and penalty.
1 Every brewer, manufacturer or distributor shall 
maintain, keep and preserve for a period of three years such 
record or records of nonintoxicating beer manufactured, 
sold or distributed in this state, including, but not limited 
to, coolers, together with such invoices, records, receipts,
bills of lading and other pertinent papers as may be
required by the commissioner, and the commissioner shall
have authority to inspect, by himself or through his duly
designated agent, the books, accounts, records and
memoranda of any person licensed under the provisions of
this article, and to examine, under oath, any officer, agent
or employee of any brewer, manufacturer or distributor.
The commissioner may require the production, within this
state at such time and place as he may designate, of any
books, accounts, papers or records kept within or without
the state, or verified copies in lieu thereof, in order that an
examination thereof may be made by the commissioner or
his duly designated agents. If, as the result of such
examination, it shall be found that any nonintoxicating
beer, subject to the payment of a tax, has been
manufactured, brewed, sold or distributed by any person,
upon which the tax has not been paid, the commissioner
shall make an assessment of the amount of tax so found to
be due, and, in addition thereto and as a part thereof, shall
assess a penalty of fifty percent of the amount of such tax
and shall notify such person of the total amount due. If the
same remains unpaid for a period of thirty days, the
commissioner shall have the authority to revoke any license
held at the time by the licensee and, in addition thereon, to
collect the amount found to be due by an appropriate legal
proceeding in any of the circuit courts in which an action for
the collection of unpaid taxes may be maintained under
section fourteen of this article, unless an appeal is taken
from the action of the commissioner as hereinafter
provided.

Within ten days after receipt of notice of any additional
amount claimed to be due from any person as shown by an
examination by the commissioner, such person, if he or she
deems themselves aggrieved thereby, shall so notify the
commissioner and shall request a hearing thereon and the
commissioner shall set a hearing into the matters raised by
such notice, which hearing shall be held as a contested case
pursuant to article five, chapter twenty-nine-a of this code,
except that the licensee shall have the right of appeal from
the commissioner's findings only to the circuit court of
Kanawha County, West Virginia. Whether the finding of the
commissioner is affirmed or reversed, such circuit court
shall enter an order accordingly and either party shall then have the right of appeal to the supreme court of appeals of the state.

§11-16-16. Restrictions on nonresident brewers, manufacturers and distributors.

No brewer or manufacturer whose chief place of business is outside the state of West Virginia shall offer for sale or sell nonintoxicating beer, in the state of West Virginia, or offer any of the same for shipment into this state, except to a distributor who is duly licensed under this article, and no such brewer or manufacturer shall consign, ship or deliver any of the same to any person within the state of West Virginia, or sell and deliver the same outside the state of West Virginia to be transported into the state of West Virginia, except to a duly licensed distributor for delivery at the place of business of such distributor as set forth in such brewer's or manufacturer's license. No such brewer or manufacturer shall have any interest in the business of any distributor or retailer, nor be connected directly or indirectly with any distributor or retailer. Every such brewer or manufacturer shall mail to the commissioner on or before the tenth day of each calendar month, a sworn statement showing all such sales and shipments of nonintoxicating beer made by such brewer or manufacturer during the preceding calendar month. If any such brewer or manufacturer shall violate any of the provisions of this article or shall violate any of the rules, regulations or order of the commissioner, such brewer or manufacturer shall be punished in like manner as provided for any nonresident brewer who shall violate any provisions of this section. If any such brewer shall violate any of the provisions of this article, he shall not be permitted to sell, ship or deliver any nonintoxicating beer to any distributor or to otherwise engage in any business authorized by this article for a period of not to exceed one year from the date the notice shall be mailed to such brewer or manufacturer by the commissioner of the fact that such brewer or manufacturer has violated the provisions of this article or such rules, regulations or orders of the commissioner. During such period of one year, it shall be unlawful for any distributor or manufacturer or for any other person within the
jurisdiction of the state of West Virginia, to buy or receive
from such brewer or manufacturer any nonintoxicating
beer or have any dealings with such brewer or
manufacturer with respect thereto. A distributor who has
not qualified with residence requirements of this article or
whose chief place of business is outside the state of West
Virginia shall not sell, ship, transport, convey or deliver or
cause to be sold, shipped, transported, conveyed or
delivered, directly or indirectly, any nonintoxicating beer
to any distributor within the state of West Virginia. If any
such distributor shall violate any of the provisions of this
article, he shall be punished in like manner as provided for
any nonresident brewer or manufacturer who shall violate
any provisions of this section.

§11-16-17. Container labeling.

It shall be unlawful for any brewer, manufacturer,
distributor or retailer to have affixed upon any beer, ale or
other malt beverage or malt cooler container, sold or for sale
in this state, a label bearing any design, picture or wording,
indicating that the contents of the container are brewed or
manufactured for one particular distributor or retailer or
group of retailers, or use any trademark other than that of a
licensed brewer or manufacturer.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It shall be unlawful:
(1) For any licensee, his, her, its or their servants, agents
or employees to sell, give or dispense, or any individual to
drink or consume, in or on any licensed premises or in any
rooms directly connected therewith, nonintoxicating beer
or cooler on weekdays between the hours of two o'clock a.m.
and seven o'clock a.m., or between the hours of two o'clock
a.m. and one o'clock p.m., on any Sunday, except in private
clubs licensed under the provisions of article seven, chapter
sixty of this code, where the hours shall conform with the
hours of sale of alcoholic liquors;
(2) For any licensee, his, her, its or their servants, agents
or employees, to sell, furnish or give any nonintoxicating
beer as defined in this article to any person visibly or
noticeably intoxicated, or to any person known to be insane
or known to be a habitual drunkard;
(3) For any licensee, his, her, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

(5) For any brewer or distributor or his, her, its or their agents, to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or to offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: Provided, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any such events: Provided, however, That no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner;

(7) For any licensee to permit in his premises any lewd, immoral or improper entertainment, conduct or practice;

(8) For any licensee except the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code, or a holder of a license for a private wine restaurant issued under the provisions of article eight of said chapter sixty, to possess a federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks
(9) For any licensee to obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times: Provided, That provisions of this subdivision shall not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of article seven, chapter sixty of this code, or the premises of a private wine restaurant licensed under the provisions of article eight of said chapter sixty;

(10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: Provided, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as such private wine restaurant is authorized to serve wine;

(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;

(12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located: Provided, That no licensee shall have in connection with his or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(13) For any person whose license has been revoked, as in this article provided, to obtain employment with any retailer within the period of one year from the date of such
revocation, or for any retailer to employ knowingly any
such person within such time;
(14) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;
(15) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;
(16) For any Class B retailer to permit the consumption of nonintoxicating beer upon his licensed premises;
(17) For any Class A licensee, his, her, its or their servants, agents or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision shall not apply where such person under the age of eighteen years is in or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises;
(18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such nonintoxicating beer or to sell, offer for sale, distribute or deliver any such nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: Provided, That nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this state wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale; and
(19) For any licensee or any agent, servant or employee of any such licensee to knowingly violate any rule or
regulation lawfully promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Any person who violates any provision of this article including, but not limited to, any provision of this section, or any rule, regulation, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five nor more than five hundred dollars, or imprisoned in the county jail for not less than thirty days or more than six months, or by both fine and imprisonment in the discretion of the court. Magistrates shall have concurrent jurisdiction with the circuit court, and any other courts having criminal jurisdiction in their county, for the trial of all misdemeanors arising under this article.

(c) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in such licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: Provided, That such person's duties shall not include the sale or delivery of nonintoxicating beer or alcoholic liquors: Provided, however, That the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the licensee's license.

§11-16-19. Unlawful acts of persons; criminal penalties.

(a) Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer,
misrepresents his or her age, or who for such purpose
presents or offers any written evidence of age which is false,
fragmental or not actually his or her own, or who illegally
attempts to purchase nonintoxicating beer, is guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
in an amount not to exceed fifty dollars or shall be
imprisoned in the county jail for a period not to exceed
seventy-two hours, or both such fine and imprisonment, or,
in lieu of such fine and imprisonment, may, for the first
offense, be placed on probation for a period not exceeding
one year.

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

(c) Any person who at any one time transports into the
state for their personal use and not for resale, more than six
and seventy-five hundredths gallons of nonintoxicating
beer, upon which the West Virginia barrel tax has not been
imposed, shall be guilty of a misdemeanor and shall, upon
conviction thereof, be fined in an amount not to exceed one
hundred dollars, and have all the untaxed nonintoxicating
beer in their possession at the time of the arrest confiscated,
or imprisoned for ten days in the county jail, or both fined
and imprisoned.

If the Congress of the United States repeals the mandate
established by the Surface Transportation Assistance Act of
1982 relating to National Uniform Drinking Age of twenty-
one as found in section six of Public Law 98-363, or a court
of competent jurisdiction declares the provision to be
unconstitutional or otherwise invalid, it is the intent of the
Legislature that the provisions contained in this section and
section eighteen of this article which prohibit the sale,
furnishing, giving, purchase or ownership of
nonintoxicating beer to or by a person who is less than
twenty-one years of age shall be null and void and the
provisions therein shall thereafter remain in effect and
apply to the sale, furnishing, giving, purchase or ownership
of nonintoxicating beer to or by a person who is less than
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
person, firm or corporation engaging in the business of
selling nonintoxicating beer, ale or other malt beverage or
cooler to a distributor or wholesaler, to discriminate in
price, allowance, rebate, refund, commission, discount or
service between distributors or wholesalers licensed in
West Virginia. "Discriminate," as used in this section, shall
mean the granting of more favorable prices, allowances,
rebates, refunds, commissions, discounts or services to one
West Virginia distributor or wholesaler than to another.

3. (2) For any brewer or manufacturer, or any other
person, firm or corporation engaged in the business of
selling nonintoxicating beer, ale or other malt beverage or
malt cooler to a distributor or wholesaler, to sell or deliver
nonintoxicating beer, ale or other malt beverage or malt
cooler to any licensed distributor or wholesaler unless and
until such brewer, manufacturer, person, firm or
corporation, as the case may be, shall have filed the brewery
or dock price of such beer, ale or other malt beverage or malt
cooler, by brands and container sizes, with the
commissioner. No price schedule shall be put into effect
unless approved in writing by the commissioner. Any
approval or disapproval of the same shall be made in
writing within fourteen days after receipt by the
commissioner. Any disapproval shall be subject to review
under the provisions of article five, chapter twenty-nine-a
of this code.

4. (b) The violation of any provision of this section by any
brewer or manufacturer shall constitute grounds for the
forfeiture of the bond furnished by such brewer or
manufacturer in accordance with the provisions of section
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.
(a) On and after July one, one thousand nine hundred seventy-one, it shall be unlawful for any brewer to transfer or deliver to a distributor any nonintoxicating beer, ale or other malt beverage or malt cooler without first having entered into an equitable franchise agreement with such distributor, which franchise agreement shall be in writing, shall be identical as to terms and conditions with all other franchise agreements between such brewer and its other distributors in this state, and which shall contain a provision in substance or effect as follows:

(1) The brewer recognizes that the distributor is free to manage his business in the manner the distributor deems best, and that this prerogative vests in the distributor, subject to the provisions of this article, the exclusive right to establish his or her selling prices, to select the brands of beer he or she wishes to handle, and to determine the efforts and resources which the distributor will exert to develop and promote the sale of the brewer’s products handled by the distributor. However, since the brewer does not expect that its products handled by the distributor will be sold by others in the territory assigned to the distributor, the brewer is dependent upon the distributor alone for the sale of such products in said territory. Consequently, the brewer expects that the distributor will price competitively the products handled by the distributor, devote reasonable effort and resources to the sale of such products and maintain a satisfactory sales level.

(2) Whenever the manufacturing, bottling or other production rights for the sale of nonintoxicating beer at wholesale of any brewer is acquired by another brewer, the franchised distributor of the selling brewer shall be entitled to continue distributing the selling brewer’s beer products as authorized in the distributor’s existing franchise agreement, and the acquiring brewer shall market all the selling brewer’s beer products through said franchised distributor as though the acquiring brewer had made the franchise agreement, and the acquiring brewer may terminate said franchise agreement only in accordance with subdivision (2), subsection (b) of this section: Provided, That the acquiring brewer may distribute any of its other beer products through its duly authorized franchises in accordance with all other provisions of this section.

(b) It shall also be unlawful:
(1) For any brewer or distributor, or any officer, agent or representative of any brewer or distributor, to coerce or persuade or attempt to coerce or persuade any person licensed to sell, distribute or job nonintoxicating beer, ale or other malt beverage or malt cooler at wholesale or retail, to enter into any contracts or agreements, whether written or oral, or to take any other action, which will violate or tend to violate any provision of this article or any of the rules, regulations, standards, requirements or orders of the commissioner promulgated as provided in section twenty-one of this article; or

(2) For any brewer or distributor, or any officer, agent or representative of any brewer or distributor, to cancel, terminate or rescind without due regard for the equities of such brewer or distributor, and without just cause, any franchise agreement, whether oral or written, and in the case of an oral franchise agreement, whether the same was entered into on or before the eleventh day of June, one thousand nine hundred seventy-one, and in the case of a franchise agreement in writing, whether the same was entered into on, before or subsequent to July one, one thousand nine hundred seventy-one. The cancellation, termination or rescission of any such franchise agreement shall not become effective for at least ninety days after written notice of such cancellation, termination or rescission has been served on the affected party and the commissioner by certified mail, return receipt requested: Provided, That said ninety-day period and said notice of cancellation, termination or rescission shall not apply if such cancellation, termination or rescission is agreed to in writing by both the brewer and the distributor involved.

(c) In the event a distributor desires to sell or transfer his or her franchise, such distributor shall give to the brewer at least sixty days notice in writing of such impending sale or transfer and the identity of the person, firm or corporation to whom such sale or transfer is to be made and such other information as the brewer may reasonably request. Such notice shall be made upon forms and contain such additional information as the commissioner by rule or regulation shall prescribe. A copy of such notice shall be forwarded to the commissioner. The brewer shall be given sixty days to approve or disapprove of such sale or transfer. If the brewer neither approves nor
disapproves thereof within sixty days of the date of receipt of such notice, the sale or transfer of such franchise shall be deemed to be approved by such brewer. In the event the brewer shall disapprove of the sale or transfer to the prospective franchisee, transferee or purchaser, such brewer shall give notice to the distributor of that fact in writing, setting forth the reason or reasons for such disapproval. The approval shall not be unreasonably withheld by the brewer. The fact that the prospective franchisee, transferee or purchaser has not had prior experience in the nonintoxicating beer business or beer business shall not be deemed sufficient reason in and of itself for a valid disapproval of the proposed sale or transfer, but may be considered in conjunction with other adverse factors in supporting the position of the brewer. Nor may the brewer impose requirements upon the prospective franchisee, transferee or purchaser which are more stringent or restrictive than those currently demanded of or imposed upon the brewer's other distributors in the state of West Virginia. A copy of such notice of disapproval shall likewise be forwarded to the commissioner and to the prospective franchisee, transferee or purchaser. In the event the issue be not resolved within twenty days from the date of such disapproval, either the brewer, distributor or prospective franchisee, transferee or purchaser shall notify the other parties of his or her demand for arbitration and shall likewise notify the commissioner thereof. A dispute or disagreement shall thereupon be submitted to arbitration in the county in which the distributor's principal place of business is located by a board of three arbitrators, which request for arbitration shall name one arbitrator. The party receiving such notice shall within ten days thereafter by notice to the party demanding arbitration name the second arbitrator, or failing to do so, the second arbitrator shall be appointed by the chief judge of the circuit court of the county in which the distributor's principal place of business is located on request of the party requesting arbitration in the first instance. The two arbitrators so appointed shall name the third, or failing to do so within ten days after appointment of the second arbitrator, the third arbitrator may be appointed by said chief judge upon request of either party.
The arbitrators so appointed shall promptly hear and determine the questions submitted pursuant to the procedures established by the American Arbitration Association and shall render their decision with all reasonable speed and dispatch but in no event later than twenty days after the conclusion of evidence. Said decision shall include findings of fact and conclusions of law and shall be based upon the justice and equity of the matter. Each party shall be given notice of such decision. If the decision of the arbitrators be in favor of or in approval of the proposed sale or transfer, the brewer shall forthwith agree to the same and shall immediately transfer the franchise to the proposed franchisee, transferee or purchaser, unless notice of intent to appeal such decision is given the arbitrators and all other parties within ten days of notification of such decision. If any such party deems himself aggrieved thereby, such party shall have a right to bring an appropriate action in circuit court. Any and all notices given pursuant to this subsection shall be given to all parties by certified or registered mail, return receipt requested.

(d) The violation of any provision of this section by any brewer shall constitute grounds for the forfeiture of the bond furnished by such brewer in accordance with the provisions of section twelve of this article. Moreover, any circuit court of the county in which a distributor's principal place of business is located shall have the jurisdiction and power to enjoin the cancellation, termination or rescission of any franchise agreement between a brewer and such distributor, and, in granting an injunction to a distributor, the court shall provide that the brewer so enjoined shall not supply the customers or territory of the distributor while the injunction is in effect.

§11-16-22. Powers of the commissioner; rules, regulations or orders.

(a) In addition to all other powers conferred upon the commissioner and in order to effectively carry out the provisions, intent and purposes of this article, the commissioner shall have the power and authority to adopt, promulgate, repeal, rescind and amend, in accordance with the provisions of chapter twenty-nine-a of this code, rules,
regulations, standards, requirements and orders, including, but not limited to, the following:

(1) Prescribing records and accounts pertaining to the manufacture, distribution and sales of nonintoxicating beer, to be kept by the licensee and the form thereof;

(2) Requiring the reporting of such information by licensees as may be necessary for the effective administration of this article;

(3) Regulating the branding and labeling of packages, bottles or other containers in which nonintoxicating beer may be sold; and, in his discretion, requiring the collection of all taxes provided for under section thirteen of this article, by the use of tax paid crowns, lids and/or stamps;

(4) Prohibiting shipment into the state and sale within the state of low grade or under-standard nonintoxicating beer;

(5) Referring to licenses and the issuance and revocation of the same;

(6) Establishing the suitability of businesses and locations for licensure, and requiring licensees to keep their places of business where nonintoxicating beer is sold at retail, and the equipment used in connection therewith, clean and in a sanitary condition;

(7) The establishment of advertising guidelines, prohibitions, and prior permissions generally, including, but not limited to (i) the use of posters, placards, mirrors, windows, doors, or indoor and outdoor signs generally, and print and electronic advertising of retail licensees specifically, (ii) the sponsoring of athletic events or contests by licensees and restrictions relating thereto, (iii) the use of equipment, fixtures or supplies in advertising, (iv) false advertising with respect to any product of or sold by any licensee, including, but not limited to, draught beer and coolers, and (v) the extent, if any, to which free goods and other inducements may be utilized by any licensee;

(8) Wholesale prices or wholesale price changes, including, but not limited to, the regulation and extent, if any, of any temporary price markoff or markdown, temporary wholesale price change downward or price discount, sometimes referred to as “post downs” or as “posting down” or any other price change, the express
purpose of which is to be into effect a temporary price
reduction, as well as the duration of time during which
such temporary price reduction is to remain in effect.

(9) Restrictions upon West Virginia distributors or
other licensees with respect to the purchase of any
nonintoxicating beer or malt coolers from manufacturers or
brewers whether within or without the state who have
failed to qualify for manufacture or shipment of any such
product in the state; and

(10) Regulating, restricting or prohibiting a distributor
from selling, offering for sale, distributing or delivering
nonintoxicating beer to any retailer whose principal place
of business, residence or licensed premises is located
without or beyond the assigned territory of such distributor
of such nonintoxicating beer.

(b) Any rule, regulation, or order heretofore adopted by
the commissioner and currently in effect upon the
convening of the regular session of the Legislature held in
the year one thousand nine hundred eighty-six, shall remain
in effect until changed by the commissioner in the manner
prescribed by article three, chapter twenty-nine-a of this
code, irrespective of whether specific authority for such
currently effective rule or regulation existed prior to such
date.

§11-16-23. Revocation or suspension of license.

(a) The commissioner may revoke or suspend the license
of any licensee (i) for any of the reasons and upon any
grounds declared to be unlawful by section eighteen of this
article; or (ii) for any reason or ground upon which a license
might have been refused in the first instance had the facts at
the time of the issuance of renewal of such license been
known to the commissioner; or (iii) for the violation of any
rule, regulation or order promulgated by the commissioner
under authority of this article.

(b) In addition to the grounds for revocation or
suspension of a license above set forth, conviction of the
licensee of any offense constituting a violation of the laws of
this state or of the United States relating to non-
intoxicating beer or alcoholic liquor shall be mandatory
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.

The commissioner shall not revoke nor suspend any license issued pursuant to this article or impose any civil penalties authorized thereby unless and until a hearing shall be held after twenty days notice to the licensee of the time and place of such hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for such proposed contemplated action, and which shall be served upon the licensee as notices under the West Virginia rules of civil procedure or by certified mail, return receipt requested, to the address for which the license was issued; at which time and place, so designated in the notice, the licensee shall have the right to appear and produce evidence in his behalf, and to be represented by counsel.

The commissioner shall have authority to summon witnesses in the hearings before him, and fees of witnesses summoned on behalf of the state in proceedings to revoke or suspend licenses shall be treated as a part of the expenses of administration and enforcement. Such fees shall be the same as those in similar hearings in the circuit courts of this state.

If, at the request of the licensee or on his motion, the hearing shall be continued and shall not take place on the day fixed by the commissioner in the notice above provided for, then such licensee's license shall be suspended until the hearing and decision of the commissioner, and in the event of revocation or suspension of such license, upon hearing before the commissioner, the licensee shall not be permitted to sell beer pending an appeal as provided by this article.

Any person continuing to sell beer after his license has been suspended or revoked, as hereinbefore provided, shall be guilty of a misdemeanor and shall be punished as provided in section nineteen of this article.

The action of the commissioner in revoking or suspending a license shall be subject to review by the circuit court of Kanawha County, West Virginia, in the manner provided in chapter twenty-nine-a of this code, when such licensee may be aggrieved by such revocation or suspension. Petition for
such review must be filed with said circuit court within a period of thirty days from and after the date of revocation or suspension by the commissioner; and any licensee obtaining an order for such review shall be required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to such matter to the circuit court. An application to the supreme court of appeals of West Virginia for a writ of error from any final order of the circuit court in any such matter shall be made within thirty days from and after the entry of such final order.

All such hearings, upon notice to show cause why license should be revoked or suspended, before the commissioner, shall be held in the offices of the commissioner in Charleston, Kanawha County, West Virginia, unless otherwise provided in such notice, or agreed upon between the licensee and the commissioner; and when such hearing is held elsewhere than in the commissioner's office, the licensee may be required to make deposits of the estimated costs of such hearing.

Whenever any licensee has been convicted of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer, or alcoholic liquor, and such conviction has become final, the clerk of the court in which such licensee has been convicted shall forward to the commissioner a certified copy of the order or judgment of conviction if such clerk has knowledge that the person so convicted is a licensee, together with the certification of such clerk that the conviction is final.

In the case of a Class B licensee with multiple licensed locations, the commissioner may, in his or her discretion, revoke or suspend only the license for the location or locations involved in the unlawful conduct for which licensure is revoked as opposed to all separately licensed locations of such licensee.

§11-16-25. Reissuance of license after revocation.

No license shall be issued to any person who has formerly held a license, under the provisions of this article, which has been revoked by the commissioner, within a period of two years from the date of such revocation; nor shall any license be issued hereunder to any person who was an officer or
stockholder of a corporation whose license was revoked as aforesaid, nor to any person who was a member of a partnership or association whose license was revoked as aforesaid, within said period of two years from the date of revocation; nor shall any license be issued to any corporation having a stockholder or director who has had a license revoked as aforesaid, within said period of two years from the date of the revocation of such person's license: Provided, That the commissioner may, in his or her discretion, reissue Class B licenses for any of such licensee's locations not involved in the unlawful conduct of which licensure was revoked notwithstanding such two year period.

§11-16-26. Municipal license tax.

Any municipal corporation in this state shall have the authority to levy a license tax under the provisions of this article upon any retailer, distributor or brewer of nonintoxicating beer whose place of business is situated within such municipality, but the amount of the license tax levied by such municipal corporation shall in no event exceed the amount fixed herein to be levied by the state. Only one municipal tax is to be so imposed and that only by the municipality in which the place of business, or warehouse, is located. Cities and incorporated towns are hereby empowered to enact ordinances for the enforcement of this article in conformity with the provisions of the same: Provided, That in no case shall the rate of such municipal license tax exceed the rate of such tax in effect on the first day of January, one thousand nine hundred eighty-six.

§11-16-27. Revenue collected and paid to state treasurer; expense of administration.

Taxes imposed and collected under the provisions of this article shall be paid to the state treasurer in the manner provided by law, and the taxes imposed by sections nine and thirteen of this article shall be credited to the state fund, general revenue. The expenses of administration and enforcement shall be paid out of the taxes collected under sections nine and thirteen of this article, but shall not exceed fifteen percent of the amount so collected.
§11-16-28. Expiration date of existing licenses; when provisions operable.

(a) A license now in effect authorizing the manufacture, distribution or sale of nonintoxicating beer shall remain in effect until June thirtieth, one thousand nine hundred eighty-six, unless sooner revoked in accordance with the provisions of this article.

(b) The provisions of this article enacted during the regular session of the Legislature held in the year one thousand nine hundred eighty-six, shall become operable at 12:01 a.m. on the first day of July of said year: Provided, That the commissioner may issue licenses prior to such date and any licensee may do any act necessary in order to prepare for and be able to engage in the retail sale of any product regulated by this article on that date and at that time.

§11-16-29. Severability.

The provisions of subdivision (cc), section ten, article two, chapter two of this code shall apply to the provisions of this article to the same extent as if the same were set forth in extenso herein and to the extent therein provided the 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.

Every prisoner sentenced to the county jail for a term exceeding six months who, in the judgment of the sheriff, shall faithfully comply with all rules and regulations of said county jail during his term of confinement shall be entitled to a deduction of five days from each month of 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.

Notwithstanding any other provision of law to the contrary, any person seventeen years of age or older may donate blood without the permission or authorization of a parent or guardian: Provided, That no parent or guardian shall be liable for any medical expense which may occur as a result of a minor donating blood under the provisions of this section: Provided, however, That nothing herein shall be construed as permitting such minor of age seventeen or older to give blood for compensation in any form.
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.

(a) The purposes and duties of the archives and history division are to locate, survey, investigate, register, identify, excavate, preserve, protect, restore and recommend to the commissioner for acquisition historic, architectural, archaeological and cultural sites, structures, documents and objects worthy of preservation, relating to the state of West Virginia and the territory included therein from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to determine the needs and priorities for the preservation, restoration and development of such sites, structures, documents and objects; to direct, protect, excavate, preserve, study, and develop such sites, structures, documents, and to operate and maintain a state library for the preservation of all public records, state papers, documents and reports of all three branches of state government including all boards,
commissions, departments and agencies as well as any other private or public papers, books or documents of peculiar or historic interest or significance; to preserve and protect all battle or regimental flags borne by West Virginians and other memorabilia of historic interest; to designate appropriate monuments, tablets or markers, historic, architectural and scenic sites within the state and to arrange for the purchase, replacement, care of and maintenance of such monuments, tablets and markers and to formulate and prepare suitable copy for them; to operate and maintain a state museum; to cooperate with the state geological and economic survey in the survey's archaeological work; to edit and publish a quarterly historical magazine devoted to the history, biography, bibliography and genealogy of West Virginia; and to perform such other duties as may be assigned to the division by the commissioner.

(b) With the advice and consent of the commission, in addition to the duties above set forth, the division shall determine the whereabouts of and require the return of furnishings missing from the capitol building, including, but not limited to, furnishings chosen or purchased for the capitol by its architect, Cass Gilbert. No furnishings from the capitol may be sold or disposed of except under the direction of the director of surplus state property pursuant to section three-a, article eight, chapter five-a of this code. If furnishings originally designated as capitol building furnishings have been sold or otherwise disposed of without the requisite sale procedures, such furnishings shall be returned to the capitol and, upon presentation of proof of the amount paid, the current owner shall be reimbursed for the cost of the furnishing less any appropriate depreciation or wear and tear.

(c) With the advice and consent of the archives and history commission, the commissioner shall appoint a director of the archives and history division, who shall have: (1) A bachelor's degree in one of the social sciences, or equivalent training and experience in the fields of West Virginia history, history, historic preservation, archaeology, or in records, library or archives
management; or (2) three years' experience in administration in the fields of West Virginia history, history, historic preservation, archaeology, or in records, library or archives management. Notwithstanding these qualifications, the person serving as the state historian and archivist on the date of enactment of this article shall be eligible for appointment as the director of the archives and history division. The director of the archives and history division shall serve as the state historian and archivist.

(d) With the approval of the commissioner, the director shall establish professional positions within the division. The director shall employ the personnel within these professional positions for the division.

(e) The director may promulgate rules and regulations concerning the professional policies and functions of the archives and history division, subject to the 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-la. General purpose.


§29-19-3. Commission on charitable organizations; powers and duties.


§29-19-5. Registration of charitable organizations; fee.

§29-19-6. Certain persons and organizations exempt from registration.


§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

§29-19-13. 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.


§29-19-1a. General purpose.

1 The purpose of this article is to protect the people of the state of West Virginia by requiring full public disclosure by persons and organizations who solicit funds from the public and the purposes for which such funds are solicited and how they are actually used, and to prevent deceptive and dishonest statements and conduct in the solicitation and reporting of funds for or in the name of charity.


1 As used in this article:

2 (1) "Charitable organization" means a person who is or holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, religious or eleemosy-
(2) "Contributions" means the promise or grant of any money or property of any kind or value.

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

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

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

(6) "Professional fund-raising counsel" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of any charitable organization but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional fund-raising counsel.
(7) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of a charitable organization, whether such solicitation is performed personally or through said person's agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as "professional fund-raising counsel" within the meaning of this article. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state is not a professional solicitor.

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

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

§29-19-3. Commission on charitable organizations; powers and duties.

(a) The commission on charitable organizations, herein referred to as the "commission," consists of seven members, including the secretary of state or his or her designate, who shall be the chairman, the attorney general or his or her designate, the commissioner of human services or his or her designate, the director of the state department of health or his or her designate, and three members to be appointed by the governor who shall serve at his will and pleasure.

(b) The commission shall serve as body advisory to the secretary of state and, as such, shall have the following powers and duties:

(1) To hold hearings and make adjudications as provided in section nine and section fifteen of this
(2) To advise and make recommendations to the secretary of state on policies and practices to effect the purposes of this article;

(3) To request that the attorney general, and, when appropriate, the prosecuting attorney of any county, take action to enforce this article or protect the public from any fraudulent scheme or criminal act;

(4) To meet at the request of the secretary of state or pursuant to regulations promulgated by him. Minutes of each meeting shall be public records and filed with the secretary of state.

(c) The secretary of state shall administer this article, prescribe forms for registration or other purposes, and promulgate rules and regulations in furtherance of this article in accordance with the provisions of chapter twenty-nine-a of this code.


No member of the commission may receive any compensation, whether in the form of salary, per diem allowance or otherwise, for or in connection with his or her services as a member. Each member, however, is entitled to reimbursement by the commission for all reasonable and necessary expenses actually incurred in connection with the performance of his or her duties as a member.

The expenses of the members and the general operating expenses of the commission shall be paid from moneys appropriated by the Legislature for those purposes.

§29-19-5. Registration of charitable organizations; fee.

(a) Every charitable organization except as provided in section six of this article which intends to solicit contributions within this state or to have funds solicited on its behalf shall, prior to any solicitation, file a registration statement with the secretary of state upon forms prescribed by him or her, which shall be good for
one full year and which shall be filed in the next and each following year in which such charitable organization is engaged in solicitation activities. It shall be the duty of the president, chairman or principal officer of such charitable organization to file the statements required under this article. Such statements shall be sworn to and shall contain the following information:

(1) The name of the organization and the purpose for which it was organized;

(2) The principal address of the organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records;

(3) The names and addresses of any chapters, branches or affiliates in this state;

(4) The place where and the date when the organization was legally established, the form of its organization;

(5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

(6) A copy of a balance sheet and income and expense statement for the organization’s immediately preceding fiscal year, or a copy of a financial statement covering, in a consolidated report, complete information as to all the preceding year’s fund-raising activities of the charitable organization, showing kind and amount of funds raised, costs and expenses incidental thereto, and allocation or disbursement of funds raised including the amounts raised in the state and the percentage of that amount that remains in the state: Provided, That for organizations raising more than fifty thousand dollars per year in contributions, the balance sheet and income and expense statement, or financial statement provided shall be audited by an independent public accountant;

(7) A copy of any determination of the organization’s tax-exempt status under section 501 of the Internal Revenue Code and a copy of the last filed Internal Revenue Service form 990 and Schedule A for every charitable organization and any parent organization;
(8) Whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others;

(9) Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;

(10) The general purpose or purposes for which the contributions to be solicited shall be used;

(11) The name or names under which it intends to solicit contributions;

(12) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions; and

(13) The names of the individuals or officers of the organization responsible for the final distribution of the contributions.

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, may separately report the information required by this subsection, or report the information to its parent organization which shall then furnish such information as to its West Virginia affiliates, chapters and branches in a consolidated form to the secretary of state. An independent member agency of a federated fund-raising organization, as hereinbefore defined, shall comply with the provisions of this article independently.

Each organization shall file a separate registration form for each name under which funds will be solicited.

(c) The registration forms and any other documents prescribed by the secretary of state shall be signed by an authorized officer or by an independent public accountant and by the chief fiscal officer of the charitable organization and shall be verified under oath.

(d) Every charitable organization collecting less than one million dollars during any year which submits an independent registration to the secretary of state shall pay an annual registration fee of fifteen dollars; every
charitable organization collecting more than one million dollars during one year which submits an independent registration to the secretary of state shall pay an annual registration fee of fifty dollars; a parent organization filing on behalf of one or more chapters, branches or affiliates or a single organization filing under different names shall pay a single annual registration fee of fifty dollars for itself and such chapters, branches or affiliates included in the registration statement.

§29-19-6. Certain persons and organizations exempt from registration.

(a) The following charitable organizations shall not be required to file an annual registration statement with the secretary of state:

(1) Educational institutions, the curriculums of which in whole or in part are registered or approved by the state board of education, either directly or by acceptance of accreditation by an accrediting body recognized by the state board of education; and any auxiliary associations, foundations and support groups which are directly responsible to any such educational institutions;

(2) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his or her use;

(3) Hospitals which are nonprofit and charitable;

(4) Organizations which solicit only within the membership of the organization by the members thereof; Provided, That the term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation. For the purpose of this section, "member" means a person having membership in a nonprofit corporation, or other organization, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and, having bona fide rights and privileges in the organization, such as the right to vote, to elect officers, directors and issues,
to hold office or otherwise as ordinarily conferred on members of such organizations.

(5) Religious organizations, churches or any group affiliated with and forming an integral part of these organizations of which no part of the net income inures to the direct benefits of any individual and which have received a declaration of current tax-exempt status from the government of the United States.

(b) The following charitable organizations are exempt from filing an annual registration statement with the secretary of state if they do not employ a professional solicitor or fund-raiser or do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of ten thousand dollars during a calendar year:

(1) Local youth athletic organizations;
(2) Community civic clubs;
(3) Community service clubs;
(4) Fraternal organizations;
(5) Labor unions;
(6) Local posts, camps, chapters or similarly designated elements or county units of such elements of bona fide veterans organizations or auxiliaries which issue charters to such local elements throughout the state;
(7) Bona fide organizations of volunteer firemen or auxiliaries;
(8) Bona fide ambulance associations or auxiliaries;
(9) Bona fide rescue squad associations or auxiliaries.

Charitable organizations which do not intend to solicit and receive in excess of ten thousand dollars, but do receive in excess of that amount from the public, shall file the annual registration statement within thirty days after contributions are in excess of ten thousand dollars.

No charitable organizations subject to this article may solicit funds from the public except for charitable purposes or expend funds raised for charitable purposes for noncharitable purposes.

All registered charitable organizations and their professional fund-raisers and solicitors are required to disclose in writing: (1) The name of a representative of the charitable organization to whom inquiries can be made, (2) the name of the charitable organization, (3) the purpose of the solicitation, (4) upon request of the person solicited, the estimated percentage of the money collected which will be applied to the cost of solicitation and administration or how much of the money collected will be applied directly for the charitable purpose, and (5) the number of the raffle, bingo or other such state permit used for fund-raising.

The disclosure statement shall be conspicuously displayed on any written or printed solicitation. Where the solicitation consists of more than one piece, the disclosure statement shall be displayed on a prominent part of the solicitation materials.

Organizations applying for registration shall be reviewed according to objective standards, including, but not limited to, the following:

(a) Charitable organizations shall include in each solicitation a clear description of programs for which funds are requested and source from which written information is available. Expenditures shall be related in a primary degree to stated purpose (programs and activities) described in solicitations and in accordance with reasonable donor expectations.

(b) Charitable organizations shall establish and exercise controls over fund-raising activities conducted for the organizations’ benefit, including written contracts and agreements and assurance of fund-raising activities without excessive pressure.

(c) Charitable organizations shall substantiate a valid governing structure and members shall comply with the provisions for conflict of interest as defined in section
twenty-five, article one, chapter thirty-one of this code.

(d) No charitable organization, professional fund-raiser or other person soliciting contributions for or on behalf of a charitable organization may use a name, symbol or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

(e) Every printed solicitation shall include the following statement: “A copy of the official registration and supporting documents may be obtained from the West Virginia Secretary of State, State Capitol, Charleston, West Virginia 25305. Registration does not imply endorsement.”

§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

(a) No person may act as a professional fund-raising counsel or professional solicitor for a charitable organization subject to the provisions of this article, unless he or she has first registered with the secretary of state. Applications for such registration shall be in writing under oath or affirmation in the form prescribed by the secretary of state and contain such information as he or she may require. The application for registration by professional fund-raising counsel or professional solicitor shall be accompanied by an annual fee in the sum of fifty dollars. A partnership or corporation, which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees. However, the names and addresses of all officers, agents and employees of professional fund-raising counsel and all professional solicitors, their officers, agents, servants or employees employed to work under the direction of a professional solicitor shall be listed in the application.

(b) The applicant shall, at the time of the making of an application, file with and have approved by the secretary of state a bond in which the applicant shall be the principal obligor in the sum of ten thousand
dollars and which shall have one or more sureties satisfactory to the secretary of state, whose liability in the aggregate as such sureties will at least equal the said sum and maintain said bond in effect so long as a registration is in effect. The bond shall run to the state for the use of the secretary of state and any person who may have a cause of action against the obligor of said bonds for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. A partnership or corporation which is a professional fund-raising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers and employees.

(c) Each registration shall be valid throughout the state for a period of one year and may be renewed for additional one-year periods upon written application under oath in the form prescribed by the secretary of state and the payment of the fee prescribed herein.

(d) The secretary of state or his or her designate shall examine each application, and if he or she finds it to be in conformity with the requirements of this article and all relevant rules and regulations and the registrant has complied with the requirements of this article and all relevant rules and regulations, he or she shall approve the registration. Any applicant who is denied approved registration may, within fifteen days from the date of notification of such denial, request, in writing, a hearing before the commission, which hearing shall be held within fifteen days from the date of the request.


(a) No charitable organization, professional fund-raising counsel or professional solicitor subject to the provisions of this article who is required to register with the secretary of state pursuant to the provisions of this article whose registration has been cancelled, suspended or refused may solicit contributions from the public.

(b) No charitable organization, professional fund-raising counsel or professional solicitor subject to the provisions of this article may use or exploit the fact of registration so as to lead the public to believe that such
registration in any manner constitutes an endorsement
or approval by the state. The use of the following
statement shall not be deemed a prohibited exploitation:
“A copy of the official registration and supporting
documents may be obtained from the West Virginia
Secretary of State, State Capitol, Charleston, West
Virginia 25305. Registration does not imply
endorsement.”

(c) No person may, in connection with the solicitation
of contributions for or the sale of goods or services of
a person other than a charitable organization, misre-
represent to or mislead anyone by any manner, means,
practice or device whatsoever, to believe that the person
on whose behalf such solicitation or sale is being
conducted is a charitable organization or that the
proceeds of such solicitation or sale will be used for
charitable purposes, if such is not the fact.

(d) No person may in connection with the solicitation
of contributions or the sale of goods or services for
charitable purposes represent to or lead anyone by any
manner, means, practice or device whatsoever, to
believe that any other person sponsors or endorses such
solicitation of contributions, sale of goods or services for
charitable purposes or approves of such charitable
purposes of a charitable organization connected there-
with when such other person has not given consent to
the use of his or her name for these purposes: Provided,
That any member of the board of directors or trustees
of a charitable organization or any other person who has
agreed either to serve or to participate in any voluntary
capacity in the campaign shall be deemed thereby to
have given his or her consent to the use of his or her
name in said campaign.

(e) No person may make any representation that he
or she is soliciting contributions for or on behalf of a
charitable organization or shall use or display any
emblem, device or printed matter belonging to or
associated with a charitable organization for the
purpose of soliciting or inducing contributions from the
public without first being authorized to do so by the
charitable organization.
(f) No professional solicitor may solicit in the name of or on behalf of any charitable organization unless such solicitor:

(1) Has obtained the written authorization of two officers of such organization, a copy of which shall be filed with the secretary of state. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued; and

(2) Carries such authorization on his or her person when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the secretary of state.

§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.

Any charitable organization or professional fund-raising counsel or professional solicitor having its or his or her principal place of business without the state, or organized under and by virtue of the laws of a foreign state, which or who shall solicit contributions from people in this state, is subject to the provisions of this article and shall be deemed to have irrevocably appointed the secretary of state as its or his or her agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, professional fund-raising counsel or professional solicitor or any partner, principal officer or director thereof in any action or proceeding brought under the provisions of this article. Service of such process upon the secretary of state shall be made by personally delivering to and leaving with him a copy thereof, and such service shall be sufficient service: Provided, That notice of such service and a copy of such process are forthwith sent by the attorney general to such charitable organization or professional fund-raising counsel or professional solicitor by registered or

(a) If any charitable organization, professional fund-raising counsel or professional solicitor fails to file any registration application or statement, report or other information required to be filed by the secretary of state under this article, or otherwise violates the provisions of this act, the secretary of state shall notify the delinquent charitable organization, professional fund-raising counsel or professional solicitor by mailing a notice by registered or certified mail, with return receipt requested, to its or his or her last-known address. If the required registration application or statement, annual report or other information is not filed or if the existing violation is not discontinued within two weeks after the formal notification or receipt of such notice, the secretary of state may cancel, suspend or refuse to accept the registration of such delinquent charitable organization, professional fund-raising counsel or professional solicitor.

(b) The secretary of state, upon his or her own motion, upon request of the commission, or upon complaint of any person, may if he or she finds reasonable ground to suspect a violation, investigate any charitable organization, professional fund-raising counsel or professional solicitor to determine whether such charitable organization, professional fund-raising counsel or professional solicitor has violated the provisions of this article or has filed any application or other information required under this article which contains false or misleading statements. If the commission finds that any application or other information contains false or misleading statements, or that a registrant under this article has violated provisions thereof, it may recommend to the secretary of state that the registration be suspended or cancelled and the secretary of state may
so order.

(c) The registration of any charitable organization, professional fund-raising counsel or professional solicitor, which or who knowingly makes a false or misleading statement in any registration application or statement, report or other information required to be filed by the secretary of state or this article, shall be revoked.

(d) All administrative proceedings under this article, including the promulgation of rules and regulations, shall be conducted in accordance with the provisions of chapter twenty-nine-a of this code and all commission adjudications shall be subject to review and appeal as provided therein.

(e) In addition to the foregoing, any person who willfully and knowingly violates any provision of this article, or who shall willfully and knowingly give false or incorrect information to the secretary of state in filing statements or reports required by this article, whether such report or statement is verified or not, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined upon first conviction thereof in an amount not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than six months, or be both fined and imprisoned, and for the second and any subsequent offense to pay a fine of not less than five hundred dollars nor more than one thousand dollars, or be imprisoned for not more than one year, or be both fined and imprisoned.

(f) Whenever the attorney general or any prosecuting attorney has reason to believe that any charitable organization, professional fund-raising counsel or professional solicitor is operating in violation of the provisions of this article, or has knowingly and willfully made any false statement in any registration application or statement, report or other information required to be filed by this article, or whenever a charitable organization, professional fund-raising counsel or professional solicitor has failed to file a registration statement required by this article, or whenever there is employed
or is about to be employed in any solicitation or
collection of contributions for a charitable organization
any device, scheme or artifice to defraud or to obtain
money or property by means of any false pretense,
representation or promise, or whenever the officers or
representatives of any charitable organization, profes-
sional fund-raising counsel or professional solicitor have
refused or failed after notice to produce any records of
such organization, or whenever the funds raised by
solicitation activities are not devoted or will not be
devoted to the charitable purposes of the charitable
organization, in addition to all other actions authorized
by law, the attorney general or prosecuting attorney
may bring an action in the name of the state against
such charitable organization and its officers, such
professional fund-raising counsel or professional solici-
tor or any other person who has violated this article or
who has participated or is about to participate in any
solicitation or collection by employing any device,
scheme, artifice, false representation or promise, to
defraud or obtain money or other property, to enjoin
such charitable organization or professional fund-
raising counsel or professional solicitor or other person
from continuing such violation, solicitation or collection,
or from engaging therein or from doing any acts in
furtherance thereof and for such other relief as the court
deems appropriate.

(g) In addition to the foregoing, any charitable
organization, professional fund-raising counsel or
professional solicitor who willfully and knowingly
violates any provisions of this article by employing any
device, scheme, artifice, false representation or promise
with intent to defraud or obtain money or other property
shall be guilty of a misdemeanor, and, upon conviction
thereof, for a first offense, shall be fined not less than
one hundred dollars nor more than five hundred dollars,
or be confined in the county jail not more than six
months, or be both fined and imprisoned; and for a
second and any subsequent offense, shall be fined not
less than five hundred dollars nor more than one
thousand dollars, or confined in the county jail not more
than one year, or be both fined and imprisoned.
At any proceeding under this section, the court shall also determine whether it is possible to return to the contributors the contributions which were thereby obtained.

If the court finds that the said contributions are readily returnable to the original contributors, it may order the money to be placed in the custody and control of a general receiver, appointed pursuant to the provisions of article six, chapter fifty-one of this code, who shall be responsible for its proper disbursement to such contributors.

If the court finds that: (1) It is impossible to obtain the names of over one half the persons who were solicited and in violation of this article, or (2) if the majority of individual contributions was of an amount less than five dollars, or (3) if the cost to the state of returning these contributions is equal to or more than the total sum to be refunded, the court shall order the money to be placed in the custody and control of a general receiver appointed pursuant to the provisions of article six, chapter fifty-one of this code. The general receiver shall maintain this money pursuant to the 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.

§38-7-42. Priority of attachments.

(a) Except as otherwise provided in subsection (b) of this section, the attachment first served on the same personal property, or on the person having such property in his possession, or on the person indebted to the defendant in the attachment suit, shall have priority of lien; and the officer making the levy shall note on the order of attachment the day and hour at which the levy is made: Provided, That where two or more attachments are delivered to the same officer at different times to be served, he shall serve them in the order in which he received them, and when they are delivered at the same time they shall be served at the same time, and, if more than one of such attachment be sustained, such of them as are sustained shall be satisfied pro rata out of the proceeds of the attached property.

(b) No garnishment of wages governed by the provisions of this article will be given priority over a voluntary assignment of wages to fulfill a support obligation, a garnishment of wages to collect arrearages in support payments, or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment, or notice of 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.

No exemption claimed under the preceding sections of this article, or any of them, shall affect or impair any claim for child or spousal support established or enforced under the provisions of chapter forty-eight or chapter forty-eight-a of this code, the purchase money of the personal estate in respect to which such exemp-
tion is claimed, or any proceeding for the collection of
taxes, or county or district or municipal levies. Any
increase in such exemption provided by a prior enact-
ment of other sections of this article shall not be
applicable to liens and all other debts and liabilities
contracted and incurred prior to the effective date of the
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) For the purposes of the provisions in this chapter
relating to garnishment:

(a) “Disposable earnings” means that part of the
earnings of an individual remaining after the deduction
from those earnings of amounts required by law to be
withheld; and

(b) “Garnishment” means any legal or equitable
procedure through which the earnings of an individual
are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable
earnings of an individual for any workweek which is
subjected to garnishment to enforce payment of a
judgment arising from a consumer credit sale or
consumer loan may not exceed the lesser of

(a) Twenty percent of his disposable earnings for that
week, or

(b) The amount by which his disposable earnings for
that week exceed thirty times the federal minimum
hourly wage prescribed by section 6(a)(1) of the “Fair
Labor Standards Act of 1938”, U.S.C. Title 19,
§206(a)(1), in effect at the time the earnings are payable.

(c) In the case of earnings for a pay period other than
a week, the commissioner shall prescribe by a rule a
multiple of the federal minimum hourly wage equivalent
in effect to that set forth in subdivision (b),
subsection (2) of this section.
(3) No court may make, execute or enforce an order or process in violation of this section. Any time after a consumer's earnings have been executed upon pursuant to article five-a or article five-b, chapter thirty-eight of this code by a creditor resulting from a consumer credit sale or consumer loan, such consumer may petition any court having jurisdiction of such matter or the circuit court of the county wherein he resides to reduce or temporarily or permanently remove such execution upon his earnings on the grounds that such execution causes or will cause undue hardship to him or his family. When such fact is proved to the satisfaction of such court, it may reduce or temporarily or permanently remove such execution.

(4) No garnishment governed by the provisions of this section will be given priority over a voluntary assignment of wages to fulfill a support obligation, a garnishment to collect arrearages in support payments, or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment, or notice of withholding in point of time 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.

(a) "Alimony" means the allowance which a person pays to or in behalf of the support of his or her spouse or divorced spouse while they are separated or after they are divorced. The payment of alimony may be required by court order or by the terms of a separation agreement. Alimony may be paid in a lump sum or paid in installments as periodic alimony. Alimony includes
temporary alimony as that term is used in section thirteen of this article, as well as alimony as that term is used in section fifteen of this article and elsewhere throughout this article.

(b) "Antenuptial agreement" or "prenuptial agreement" means an agreement between a man and woman before marriage, but in contemplation and generally in consideration of marriage, whereby the property rights and interests of the prospective husband and wife, or both of them, are determined, or where property is secured to either or both of them, to their separate estate, or to their children or other persons. An antenuptial agreement may include provisions which define the respective property rights of the parties during the marriage, or in the event of the death of either or both of the parties, and may provide for the disposition of marital property upon an annulment of the marriage or a divorce or separation of the parties. A prenuptial agreement is void if at the time it is made:

(1) Either of the parties is a minor; or

(2) The female party to the agreement is pregnant: Provided, That such female shall be presumed for the purposes of this article to have been pregnant at the time the agreement was made if she gives birth to a child at any time within the nine month period next following the execution of the agreement.

(c) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(d) "Income" means any of the following:

(1) Commissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his employer and successor employers;

(2) Any payment due or to be due in the future to an
individual from a profit-sharing plan, a pension plan, an
insurance contract, an annuity, social security, unem-
ployment compensation, supplemental employment
benefits, and workers’ compensation;

(3) Any amount of money which is owing to an
individual as a debt from an individual, partnership,
association, public or private corporation, the United
States or any federal agency, this state or any political
subdivision of this state, any other state or a political
subdivision of another state, or any other legal entity
which is indebted to the obligor.

(e) “Marital property” means:

(1) All property and earnings acquired by either
spouse during a marriage, including every valuable
right and interest, corporeal or incorporeal, tangible or
intangible, real or personal, regardless of the form of
ownership, whether legal or beneficial, whether individ-
ually held, held in trust by a third party, or whether
held by the parties to the marriage in some form of co-
ownership such as joint tenancy or tenancy in common,
joint tenancy with the right of survivorship, or any other
form of shared ownership recognized in other jurisdic-
tions without this state, except that marital property
shall not include separate property as defined in
subsection (d) of this section; and

(2) The amount of any increase in value in the separate
property of either of the parties to a marriage, which
increase results from (A) an expenditure of funds which
are marital property, including an expenditure of such
funds which reduces indebtedness against separate
property, extinguishes liens, or otherwise increases the
next value of separate property, or (B) work performed
by either or both of the parties during the marriage.

The definitions of “marital property” contained in this
subsection and “separate property” contained in subsec-
tion (d) of this section shall have no application outside
the provisions of this article, and the common law as to
the ownership of the respective property and earnings
of a husband and wife, as altered by the provisions of
article three of this chapter and other provisions of this
(f) “Separate property” means:

(1) Property acquired by a person before marriage; or

(2) Property acquired by a person during marriage in exchange for separate property which was acquired before the marriage; or

(3) Property acquired by a person during marriage, but excluded from treatment as marital property by a valid agreement of the parties entered into before or during the marriage; or

(4) Property acquired by a party during marriage by gift, bequest, devise, descent or distribution; or

(5) Property acquired by a party during a marriage but after the separation of the parties and before the granting of a divorce, annulment or decree of separate maintenance; and

(6) Any increase in the value of separate property as defined in subdivision (1), (2), (3), (4) or (5) of this subsection which is due to inflation or to a change in market value resulting from conditions outside the control of the parties.

(g) “Separation” or “separation of the parties” means the separation of the parties next preceding the filing of an action under the provisions of this article, which separation continues, without the parties cohabiting or otherwise living together as husband and wife, and without interruption.

(h) “Separation agreement” means a written agreement entered into by a husband and wife whereby they agree to live separate and apart from each other and, in connection therewith, agree to settle their property rights; or to provide for the custody and support of their minor child or children, if any; or to provide for the payment or waiver of alimony by either party to the
other; or to otherwise settle and compromise issues arising out of their marital rights and obligations. Insofar as an antenuptial agreement as defined in subsection (b) of this section affects the property rights of the parties or the disposition of property upon an annulment of the marriage, or a divorce or separation of the parties, such antenuptial agreement shall be regarded as a separation agreement under the provisions of this article.

§48-2-13. Temporary relief during pendency of action for divorce, annulment or separate maintenance.

(a) At the time of the filing of the complaint or at any time after the commencement of an action for divorce, annulment or separate maintenance under the provisions of this article, and upon motion for temporary relief, notice of hearing and hearing, the court may order all or any portion of the following temporary relief, which order shall govern the marital rights and obligations of the parties during the pendency of the action:

(1) The court may require either party to pay temporary alimony in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party.

(2) The court may provide for the custody of minor children of the parties subject to such rights of visitation, both in and out of the residence of the custodial parent or other person or persons having custody, as may be appropriate under the circumstances.

(3) The court may require either party to pay temporary child support in the form of periodic installments for the maintenance of the minor children of the parties.

(4) The court may compel either party to pay attorney's fees and court costs reasonably necessary to enable the other party to prosecute or defend the action in the trial court. The question of whether or not a party is...
entitled to temporary alimony shall not be decisive of
that party's right to a reasonable allowance of attorney's
fees and court costs. An order for temporary relief
awarding attorney fees and court costs may be modified
at any time during the pendency of the action, as the
exigencies of the case or equity and justice may require,
including, but not limited to, a modification which
would require full or partial repayment of fees and costs
by a party to the action to whom or on whose behalf
payment of such fees and costs was previously ordered.
If an appeal be taken or an intention to appeal be stated,
the court may further order either party to pay attorney
fees and costs on appeal.

(5) As an incident to requiring the payment of
temporary alimony or temporary child support, the
court may order either party to continue in effect
existing policies of insurance covering the costs of health
care and hospitalization of the other party and the minor
children of the parties. If there is no such existing policy
or policies, the court shall order that such health care
insurance coverage be paid for by the noncustodial
parent, if the court determines that such health care
coverage is available to the noncustodial parent at a
reasonable cost. Payments made to an insurer pursuant
to this subdivision, either directly or by a deduction
from wages, shall be deemed to be temporary alimony
or temporary child support, in such proportion as the
court shall direct: Provided, That if the court does not
set forth in the order that a portion of such payments
is to be deemed temporary child support, then all such
payments made pursuant to this subdivision shall be
deemed to be temporary alimony.

(6) As an incident to requiring the payment of
temporary alimony or temporary child support, the
court may grant the exclusive use and occupancy of the
marital home to one of the parties during the pendency
of the action, together with all or a portion of the
household goods, furniture and furnishings, reasonably
necessary for such use and occupancy. The court may
require payments to third parties in the form of home
loan installments, land contract payments, rent, pay-
ments for utility services, property taxes, insurance
coverage or other expenses or charges reasonably
necessary for the use and occupancy of the marital
domicile. Payments made to a third party pursuant to
this subdivision shall be deemed to be temporary
alimony or temporary child support, in such proportion
as the court shall direct: Provided, That if the court does
not set forth in the order that a portion of such payments
is to be deemed temporary child support, then all such
payments made pursuant to this subdivision shall be
deemed to be temporary alimony: Provided, however,
That the court may order such payments to be made
without denominating them either as temporary alim-
ony or temporary child support, reserving such decision
until such time as the court determines the interests of
the parties in marital property and equitably divides the
same: Provided further, That at the time the court
determines the interests of the parties in marital
property and equitably divides the same, the court may
consider the extent to which payments made to third
parties under the provisions of this subdivision have
affected the rights of the parties in marital property,
and may treat such payments as a partial distribution
of marital property notwithstanding the fact that such
payments have been denominated temporary alimony or
temporary child support or not so denominated under
the provisions of this subdivision. Nothing contained in
this subdivision shall abrogate an existing contract
between either of the parties and a third party, or affect
the rights and liabilities of either party or a third party
under the terms of such contract.

(7) As an incident to requiring the payments of
temporary alimony, the court may grant the exclusive
use and possession of one or more motor vehicles to
either of the parties during the pendency of the action.
The court may require payments to third parties in the
form of automobile loan installments or insurance
coverage, and any such payments made pursuant to this
subdivision shall be deemed to be temporary alimony;
Provided, That the court may order such payments to
be made without denominating them as temporary
alimony, reserving such decision until such time as the
court determines the interests of the parties in marital
property and equitably divides the same: *Provided,*
however, That at the time the court determines the
interests of the parties in marital property and equit-
ably divides the same, the court may consider the extent
to which payments made to third parties under the
provisions of this subdivision have affected the rights of
the parties in marital property, and may treat such
payments as a partial distribution of marital property
notwithstanding the fact that such payments have been
denominated temporary alimony or not so denominated
under the provisions of this subdivision. Nothing
contained in this subdivision shall abrogate an exis-
ting contract between either of the parties and a third party,
or affect the rights and liabilities of either party or a
third party under the terms of such contract.

(8) Where the pleadings include a specific request for
specific property or raise issues concerning the equita-
ble division of marital property, the court may enter
such order as is reasonably necessary to preserve the
estate of either or both of the parties, including the
imposition of a constructive trust, so that such property
be forthcoming to meet any order which may be made
in the action, and may compel either party to give
security to abide such order, or may require the
property in question to be delivered into the temporary
custody of a third party. The court may further order
either or both of the parties to pay the costs and
expenses of maintaining and preserving the property of
the parties during the pendency of the action: *Provided,*
That at the time the court determines the interest of the
parties in marital property and equitably divides the
same, the court may consider the extent to which
payments made for the maintenance and preservation of
property under the provisions of this subdivision have
affected the rights of the parties in marital property,
and may treat such payments as a partial distribution
of marital property. When appropriate, the court may
release all or any part of such protected property for
sale and substitute all or a portion of the proceeds of the
sale for such property.
(9) Unless a contrary disposition be found appropriate and ordered pursuant to other provisions of this section, then upon the motion of either party, the court may compel the other party to deliver to the movant party any of his or her separate estate which may be in the possession or control of the respondent party, and may make such further order as is necessary to prevent either party from interfering with the separate estate of the other.

(10) The court may enjoin either party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other.

(b) In ordering temporary relief under the provisions of this section, the court shall consider the financial needs of the parties, the present employment income and other recurring earnings of each party from any source, their income-earning abilities, and the respective legal obligations of each party to support himself or herself and to support any other persons. Except in extraordinary cases supported by specific findings set forth in the order granting relief, payments of temporary alimony and temporary child support are to be made from a party’s employment income and other recurring earnings, and not from the corpus of a party’s separate estate, and an award of such relief shall not be disproportionate to a party’s ability to pay as disclosed by the evidence before the court.

(c) At any time after a party is abandoned or deserted or after the parties to a marriage have lived separate and apart in separate places of abode without any cohabitation, the party abandoned or either party living separate and apart may apply for relief pursuant to this section by instituting an action for divorce as provided in section ten of this article, alleging that the plaintiff reasonably believes that the period of abandonment or of living separate and apart will continue for the period prescribed by the applicable provisions of section four of this article. If the period of abandonment or living separate and apart continues for the period prescribed
by the applicable provisions of section four of this article, the divorce action may proceed to a hearing as provided in sections twenty-four and twenty-five of this article without a new complaint being filed: Provided, That the party desiring to proceed to a hearing shall give the opposing party at least twenty days' notice of the time, place and purpose of the hearing, unless the opposing party shall have filed with the court a waiver of notice of further proceedings, signed by such opposing party. If such notice is required to be served, it shall be served in the same manner as a complaint, regardless of whether the opposing party has appeared or answered.

(d) To facilitate the resolution of issues arising at a hearing for temporary relief, the court may, or upon the motion of either party shall, order each of the parties to file with the court, and serve on the other party, a sworn statement of each party's assets, liabilities and employment income and other earnings from any source. The statement shall be in such form and contain such detailed information as the court may prescribe by general order. In addition, the court may, or upon the motion of either party shall, order the parties to comply with the disclosure requirements set forth in section thirty-three of this article, and, if necessary, continue the hearing for temporary relief from time to time to afford the parties an opportunity to obtain and provide such information.

(e) An ex parte order granting all or part of the relief provided for in this section may be granted without written or oral notice to the adverse party if:

(1) It appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or such party's attorney can be heard in opposition. Such potential injury, loss or damage may be anticipated when the following conditions exist: Provided, That the following list of conditions shall not be exclusive:

(A) There is a real and present threat of physical
injury to the applicant at the hands or direction of the adverse party;

(B) The adverse party is preparing to quit the state with a minor child or children of the parties, thus depriving the court of jurisdiction in the matter of child custody;

(C) The adverse party is preparing to remove property from the state, or is preparing to transfer, convey, alienate, encumber or otherwise deal with property which could otherwise be subject to the jurisdiction of the court and subject to judicial order under the provisions of this section or section fifteen of this article;

And,

(2) The movant party or his or her attorney certifies in writing the efforts, if any, which have been made to give the notice, and the reasons supporting his claim that notice should not be required.

(f) Every ex parte order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the circuit clerk's office and entered of record; and shall set forth the finding of the court that unless the order is granted without notice there is probable cause to believe that existing conditions will result in immediate and irreparable injury, loss or damage to the movant party before the adverse party or his or her attorney can be heard in opposition. The order granting ex parte relief shall fix a time for a hearing for temporary relief to be held within a reasonable time, not to exceed twenty days, unless before the time so fixed for hearing, such hearing is continued for good cause shown or with the consent of the party against whom the ex parte order is directed. The reasons for the continuance shall be entered of record. Within the time limits described herein, when an ex parte order is made, a motion for temporary relief shall be set down for hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character. If the party who obtained the ex parte order fails to proceed with a 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
grandparents are related to such minor child through a party:

(A) Whose whereabouts are unknown, or

(B) Who did not answer or otherwise appear and defend the cause of action.

(2) The court may require either party to pay child support in the form of periodic installments for the maintenance of the minor children of the parties.

(3) As an incident to requiring the payment of alimony or child support, the court may order either party to continue in effect existing policies of insurance covering the costs of health care and hospitalization of the other party and the minor children of the parties: Provided, That if the other party is no longer eligible to be covered by such insurance because of the granting of an annulment or divorce, the court may require a party to substitute such insurance with a new policy to cover the other party, or may consider the prospective cost of such insurance in awarding alimony to be paid in periodic installments. If there is no such existing policy or policies, the court shall order such health care insurance coverage to be paid for by the noncustodial parent, if the court determines that such health care insurance coverage is available to the noncustodial parent at a reasonable cost. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be deemed to be alimony, child support or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony: Provided, however, That the designation of insurance coverage as alimony under the provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the order to provide for alimony other than insurance for covering the costs of health care and hospitalization.
(4) As an incident to requiring the payment of alimony or child support, the court may grant the exclusive use and occupancy of the marital home to one of the parties, together with all or a portion of the household goods, furniture and furnishings reasonably necessary for such use and occupancy. Such use and occupancy shall be for a definite period, ending at a specific time set forth in the order, subject to modification upon the petition of either party. Except in extraordinary cases supported by specific findings set forth in the order granting relief, a grant of the exclusive use and occupancy of the marital home shall be limited to those situations where such use and occupancy is reasonably necessary to accommodate the rearing of minor children of the parties. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes, insurance coverage, or other expenses or charges reasonably necessary for the use and occupancy of the marital domicile. Payments made to a third party pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony, child support or installment payments for the distribution of marital property, in such proportion as the court shall direct: 

Provided, That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

(5) As an incident to requiring the payment of alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties. The court may require payments to third parties in the form of automobile loan installments or insurance coverage, and any such payments made pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony or installment
payments for the distribution of marital property, as the court may direct. Nothing contained in this subsection shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

(6) Where the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property as defined in section one of this article, the court shall order such relief as may be required to effect a just and equitable distribution of the property and to protect the equitable interests of the parties therein.

(7) Unless a contrary disposition be found appropriate and ordered pursuant to other provisions of this section, then upon the motion of either party, the court may compel the other party to deliver to the movant party any of his or her separate estate which may be in the possession or control of the respondent party, and may make such further order as is necessary to prevent either party from interfering with the separate estate of the other.

(8) The court may enjoin either party from the molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other.

(9) The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. Nothing contained in this subdivision shall affect the liability of the parties for indebtedness on any such account incurred before the transfer of such account.

(c) In any case where an annulment or divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.
(d) In any case where a divorce or annulment is granted in this state upon constructive service of process, and personal jurisdiction is thereafter obtained of the defendant in such case, the court may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(e) At any time after the entry of an order pursuant to the provisions of this section, the court may, upon the verified petition of either of the parties, revise or alter such order concerning the maintenance of the parties, or either of them, and make a new order concerning the same, as the altered circumstances or needs of the parties may render necessary to meet the ends of justice; and the court may also from time to time afterward, on the verified petition of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter such order concerning the custody and maintenance of the children, and make a new order concerning the same, as the circumstances of the parents or other proper person or persons and the benefit of the children may require. In granting such relief, the court may, where other means are not conveniently available, alter any prior order of the court with respect to the distribution of marital property, if such property is still held by the parties, and if necessary to give effect to a modification of alimony, child support or child custody or necessary to avoid an inequitable or unjust result which would be caused by the manner in which the modification will affect the prior distribution of marital property.

(f) In every case where a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the death of the payor party or to cease in such event. Where alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the death of the payor party or is to cease, or where the parties
have not entered into a separation agreement and
alimony is to be awarded, the court shall specifically
state as a part of its order whether such payments of
alimony are to be continued beyond the death of the
payor party or cease.

(g) In every case where a separation agreement is the
basis for an award of alimony, the court, in approving
the agreement, shall examine the agreement to ascer-
tain whether it clearly provides for alimony to continue
beyond the remarriage of the payee party or to cease in
such event. Where alimony is to be paid pursuant to the
terms of a separation agreement which does not state
whether the payment of alimony is to continue beyond
the remarriage of the payee party or is to cease, or
where the parties have not entered into a separation
agreement and alimony is to be awarded, the court shall
specifically state as a part of its order whether such
payments of alimony are to be continued beyond the
remarriage of the payee party or cease.

(h) In addition to the statement provided for in
subsection (d), section thirteen of this article and in
addition or in lieu of the disclosure requirements set
forth in section thirty-three of this article, the court may
order accounts to be taken as to all or any part of
marital property or the separate estates of the parties,
and may direct that the accounts be taken as of the date
of the marriage, the date upon which the parties
separated, or any other time deemed to be appropriate
in assisting the court in the determination and equitable
division of property.

(i) In determining whether alimony is to be awarded,
or in determining the amount of alimony, if any, to be
awarded under the provisions of this section, the court
shall consider and compare the fault or misconduct of
either or both of the parties and the effect of such fault
or misconduct as a contributing factor to the deteriora-
tion of the marital relationship. However, alimony shall
not be awarded in any case where both parties prove
grounds for divorce and are denied a divorce, nor shall
an award of alimony under the provisions of this section
be ordered which directs the payment of alimony to a
party determined to be at fault, when, as a grounds granting the divorce, such party is determined by the court:

(1) To have committed adultery; or

(2) To have been convicted for the commission of a crime which is a felony, subsequent to the marriage, if such conviction has become final; or

(3) To have actually abandoned or deserted his or her spouse for six months.

(j) Whenever under the terms of this section or section thirteen of this article a court enters an order requiring the payment of alimony or child support, if the court anticipates the payment of such alimony or child support or any portion thereof to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. Sec. 1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

§48-2-15a. Withholding from income.

(a) On and after the effective date of this section, every order entered or modified under the provisions of this article which requires the payment of child support or spousal support shall include a provision for automatic withholding from income of the obligor if arrearages in such support occur, in order to facilitate income withholding as a means of collecting support when such arrearages occur.

(b) Every such order as described in subsection (a) above shall contain language authorizing income withholding to commence without further court action:

(1) When the support payments required by such order are thirty days or more in arrears if the order requires payments to be made in monthly installments;

(2) When the support payments required by such
order are twenty-eight days or more in arrears if the
order requires payments to be paid in weekly or bi-
weekly installments; or

(3) When the obligor requests the child advocate office
to commence income withholding.

(c) For the purposes of this section, the number of days
support payments are in arrears shall be considered to
be the total cumulative number of days during which
payments required by a court order have been delin-
quent, whether or not such days are consecutive.

(d) The supreme court of appeals shall make available
to the circuit courts standard language to be included
in all such orders, so as to conform such orders to the
applicable requirements of state and federal law
regarding the withholding from income of amounts
payable as support.

(e) Every support order entered by a circuit court of
this state prior to the effective date of this section shall
be considered to provide for an order of income
withholding by operation of law, notwithstanding the
fact that such support order does not in fact provide for
an order of withholding.

CHAPTER 48A. ENFORCEMENT OF
FAMILY OBLIGATIONS.

Article
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.

ARTICLE 1. GENERAL PROVISIONS.


1. This chapter shall be known and cited as the “Family

It is the purpose of the Legislature in enacting this chapter to improve and facilitate support enforcement efforts in this state, with the primary goal being to establish and enforce reasonable child support orders and thereby improve opportunities for children. It is the intent of the Legislature that to the extent practicable, the laws of this state should encourage and require a child’s parents to meet the obligation of providing that child with adequate food, shelter, clothing, education, and health and child care.


As used in this chapter:

(1) “Automatic data processing and retrieval system” means a computerized data processing system designed to do the following:

(A) To control, account for, and monitor all of the factors in the support enforcement collection and paternity determination process, including, but not limited to:

(i) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screenings to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction;

(ii) Checking of records of such individuals on a periodic basis with federal, interstate, intrastate, and local agencies;

(iii) Maintaining the data necessary to meet applicable federal reporting requirements on a timely basis; and

(iv) Delinquency and enforcement activities;
(B) To control, account for, and monitor the collection and distribution of support payments (both interstate and intrastate), the determination, collection and distribution of incentive payments (both interstate and intrastate), and the maintenance of accounts receivable on all amounts owed, collected and distributed; and

(C) To control, account for, and monitor the costs of all services rendered, either directly or by exchanging information with state agencies responsible for maintaining financial management and expenditure information;

(D) To provide access to the records of the department of human services for aid to families with dependent children in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program;

(E) To provide for security against unauthorized access to, or use of, the data in such system;

(F) To facilitate the development and improvement of the income withholding and other procedures designed to improve the effectiveness of support enforcement through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur; and

(G) To provide management information on all cases from initial referral or application through collection and enforcement.

(2) "Chief judge" means the following:

(A) The circuit judge in a judicial circuit having only one circuit judge, except for the twenty-third and thirty-first judicial circuits;

(B) In the twenty-third and thirty-first judicial circuits, a chief judge designated by the judges thereof from among themselves by general order, to act as chief judge for both circuits for the purposes of this chapter:

Provided, That if the judges cannot agree as to who shall
act as chief judge, then a chief judge shall be designated for the purposes of this chapter by the supreme court of appeals; or

(C) The chief judge of the circuit court in a judicial circuit having two or more circuit judges.

(3) "Child advocate office" means the office within the department of human services created under the provisions of article two of this chapter, intended by the Legislature to be the single and separate organizational unit of state government administering programs of child and spousal support enforcement and meeting the staffing and organizational requirements of the secretary of the federal department of health and human services.

(4) "Children's advocate" or "advocate" means a person appointed to such position under the provisions of section two, article three of this chapter.

(5) "Court" means a circuit court of this state, unless the context in which such term is used clearly indicates that reference to some other court is intended. For the purposes of this chapter, the circuit courts of the twenty-third and thirty-first judicial circuits shall be considered as being in a single judicial circuit.

(6) "Court of competent jurisdiction" means a circuit court within this state, or a court or administrative agency of another state having jurisdiction and due legal authority to deal with the subject matter of the establishment and enforcement of support obligations. Whenever in this chapter reference is made to an order of a court of competent jurisdiction, or similar wording, such language shall be interpreted so as to include orders of an administrative agency entered in a state where enforceable orders may by law be properly made and entered by such administrative agency.

(7) "Custodial parent" or "custodial parent of a child" means a parent who has been granted custody of a child by a court of competent jurisdiction. "Noncustodial parent" means a parent of a child with respect to whom custody has been adjudicated with the result that such
parent has not been granted custody of the child.

(8) "Domestic relations matter" means any circuit court proceeding involving child custody, child visitation, child support or alimony.

(9) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(10) "Employer" means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or political subdivision of another state, and any other legal entity which hires and pays an individual for his services.

(11) "Guardian of the property of a child" means a person lawfully invested with the power, and charged with the duty, of managing and controlling the estate of a child.

(12) "Income" means any of the following:

(A) Commissions, earnings, salaries, wages, and other income due or to be due in the future to an obligor from his employer and successor employers;

(B) Any payment due or to be due in the future to an obligor from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental employment benefits, and workers' compensation;

(C) Any amount of money which is owing to the obligor as a debt from an individual, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity
(13) "Individual entitled to support enforcement services under the provisions of this chapter" means:

(A) An individual who has applied for or is receiving services from the child advocate office and who is the custodial parent of a child, or the primary caretaker of a child, or the guardian of the property of a child when:

(i) Such child has a parent and child relationship with an obligor who is not such custodial parent, primary caretaker or guardian; and

(ii) The obligor with whom the child has a parent and child relationship is not meeting an obligation to support the child, or has not met such obligation in the past; or

(B) An individual who has applied for or is receiving services from the child advocate office and who is an adult or an emancipated minor whose spouse or former spouse has been ordered by a court of competent jurisdiction to pay spousal support to the individual, whether such support is denominated alimony or separate maintenance, or is identified by some other terminology, thus establishing a support obligation with respect to such spouse, when the obligor required to pay such spousal support is not meeting the obligation, or has not met such obligation in the past.

(14) "Master" or "family law master" means a person appointed to such position under the provisions of section one, article four of this chapter.

(15) "Obligee" means an individual to whom a duty of support is owed, or the state of West Virginia or the department of human services, if support has been assigned to the state or department.

(16) "Obligor" means a person who owes a legal duty to support another person.

(17) "Office of the children's advocate" means the office created in section two, article three of this chapter.

(18) "Primary caretaker of a child" means a parent or
other person having actual physical custody of a child without a court order granting such custody, and who has been primarily responsible for exercising parental rights and responsibilities with regard to such child.

(19) "Source of income" means an employer or successor employer of any other person who owes or will owe income to an obligor.

(20) "Support" means the payment of money:

(A) For a child or spouse, ordered by a court of competent jurisdiction, whether the payment is ordered in an emergency, temporary, permanent or modified order, decree or judgment of such court;

(B) To third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental, or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile, or payments for day care; and/or

(C) For a mother, ordered by a court of competent jurisdiction, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

(21) "Support order" means any order of a court of competent jurisdiction for the payment of support, 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-2-9. 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-2-15. 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-2-19. Providing information to credit reporting agencies.
§48A-2-20. Publicizing child support enforcement services.

§48A-2-1. **West Virginia child advocate office established.**

1 (a) There is hereby established within the department of human services the child advocate office.

3 (b) The child advocate office shall be terminated pursuant to the provisions of article ten, chapter four of this code on the first day of July, one thousand nine hundred ninety, unless sooner terminated or unless continued or reestablished pursuant to such article and 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 a child advocate office which will focus on the vital issues of child support, spousal support, child custody, visitation rights, and other related family law issues involving the well-being of children, inasmuch as such issues are properly within the jurisdiction of the state of West Virginia. The Legislature of the state of West Virginia, in creating the child advocate office, recognizes the seriousness of family law issues as they affect the health and welfare of the children of this state. The Legislature intends, by the enactment of this article and through the creation of this office, to specifically assign the highest priority to these issues. It is the sense of the Legislature that there must be a state office which, as its primary function, protects and promotes the best interests of children; which recognizes the rights and obligations of all persons involved in family law issues; and which has the authority and the means to resolve...
family law issues fairly and efficiently. Through the establishment of the child advocate office the Legislature intends to create an impetus and a mechanism for dealing with the varied problems associated with support enforcement, thereby enhancing the health and welfare of our state's children and their families.

(b) In order to carry out the purposes and intent of the Legislature, the child advocate office shall have, as its primary responsibilities, the following:

(1) The offering of mediation and counseling to parents so as to resolve family law issues which affect the well-being of children;

(2) The enforcement of support obligations owed by a parent to his or her child or children;

(3) The enforcement of support obligations owed by an individual to his or her spouse or former spouse;

(4) Locating parents or spouses who owe a duty to pay support;

(5) Establishing paternity on behalf of minors whose paternal parentage has not been acknowledged by the father or otherwise established by law;

(6) Obtaining court orders for child and spousal support;

(7) Enforcing orders which establish the rights of parents as to custody and visitation; and

(8) Assuring that the assistance and services of the office required to be provided under the provisions of this chapter will be available to all individuals for whom such assistance is required or requested.

§48A-2-3. Acceptance of federal purposes; compliance with federal requirements and standards.

(a) The state assents to the purposes of the federal laws regarding child support and establishment of paternity and agrees to accept federal appropriations and other forms of assistance made under or pursuant thereto, and authorizes the receipt of such appropriations into the state treasury and the receipt of other
forms of assistance by the child advocate office for
expenditure, disbursement, and distribution by the
office in accordance with the provisions of this chapter
and the conditions imposed by applicable federal laws,
rules, and regulations.

(b) Insofar as such actions are consistent with the laws
of this state granting authority to the child advocate
office and the director, the office shall comply with such
requirements and standards as the secretary of the
federal department of health and human services may
have determined, as of the effective date of this section,
to be necessary for the establishment of an effective
program for locating obligors, establishing paternity,
receiving 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.

(a) There shall be a director of the child advocate
office who shall be appointed by the commissioner of the
department of human services. The salary of the
director shall be set by the commissioner and be paid
with funds of the office. The director shall be allowed
and paid necessary expenses incident to the
performance of his or her official duties.

(b) The director shall be selected with special refer-
ence and consideration given to his or her training,
experience, capacity and interest in or relating to the
child and spousal support enforcement programs
administered by the child advocate office.

(c) Before entering upon the duties of his or her office,
the director shall take and subscribe to the oath of office
prescribed by section five, article IV of the West
Virginia Constitution, and shall execute a corporate
surety bond in the sum of fifteen thousand dollars for
the faithful performance of his or her duties. The bond
shall be in the form prescribed by the attorney general
and approved by the governor, and both the certificate
of the oath and the bond shall be filed with the secretary
of state. Premiums upon the bond shall be paid out of
the funds of the child advocate office.

(d) The director shall not be a candidate for, or hold, any other public office or public employment under the federal government, or the government of this state or any of its political subdivisions, or be a member or officer of any political party committee, or serve as an election official, or engage in any political activity, other than to vote, in behalf of, or in opposition to, any candidate, or political party in an election. Any violation by the director of the provisions of this subsection shall 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.

All functions and responsibilities of the office of child support enforcement within the department of human services are hereby continued and vested in the child advocate office created under the provisions of this article.

§48A-2-6. Organization of the child advocate office.

(a) Within limits of state appropriations and federal grants and subject to provisions of state and federal laws, rules and regulations, the director shall organize the office into appropriate administrative units which shall be operationally and functionally distinct and separate from any other units or programs of the department of human services so that employees of the office shall not be required to perform functions or duties of the department which are outside the scope of activities of the child advocate office as defined in this chapter. Consistent with the requirements of article six, chapter twenty-nine of this code, the director shall appoint and employ for the office such assistants and employees, as may in his or her judgment be necessary or desirable to carry out fully and in an orderly, efficient and economical manner the powers, duties and responsibilities of the office.

(b) Notwithstanding the provisions of sections three and four, article six, chapter twenty-nine of this code
relating to the manner in which additions are made to
the list of positions in the classified service, and any
other provision of this code to the contrary, the positions
held by employees of the office shall be positions in the
classified service except for those positions named in
subdivisions (2),(3),(4),(9) and (12), subsection (a) of said
section four.

(c) Persons who are employees of the office of child
support enforcement in the department of human
services on the day preceding the effective date of this
section shall be given the option of continuing their
employment with the department of human services by
filling vacancies in existing positions elsewhere within
the department for which they qualify, or such persons
shall be assigned to positions in the child advocate office,
retaining their then current merit or civil service
ratings under the classified service.


(a) The director may promulgate legislative rules in
accordance with the provisions of article three, chapter
twenty-nine-a of this code where such rules are required
to implement the provisions of this chapter.

(b) The director shall annually prepare a proposed
budget for the next fiscal year, and submit such budget
to the commissioner. Such budget shall include all sums
necessary to support the activities of the child advocate
office.

(c) In addition to any other duties required by this
chapter, the director shall:

(1) Develop and recommend guidelines for the con-
duct, operations, and procedures of the office and his or
her employees, including, but not limited to, the
following:

(A) Case load and staffing standards for employees
who perform investigation and recommendation func-
tions, enforcement functions, and clerical functions.

(B) Orientation programs for clients of the office.

(C) Public educational programs regarding domestic
relations law and community resources, including financial and other counseling, and employment opportunities.

(D) Model pamphlets and procedural forms, which shall be distributed to each local office serving clients.

(2) Provide training programs for the childrens’ advocates and other employees of the office, to better enable them to carry out the duties described in this chapter.

(3) Gather and monitor relevant statistics.

(4) Develop and recommend guidelines to be used in determining whether or not visitation has been wrong-fully denied or custody has been abused.

(5) Develop standards and procedures for the transfer of part or all of the responsibilities for a case from one unit of the office to another in situations considered appropriate.


(a) On or before the first day of October, one thousand nine hundred eighty-seven, the director of the child advocate office shall, by legislative rule, establish guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support orders, and to increase predictability for parents, children and other persons who are directly affected by child support orders. Such guidelines shall be followed by the children’s advocate, the family law master and the circuit court unless, in each instance, the advocate, master or judge sets forth, in writing, reasons for not following the guidelines in the particular case involved. Notwithstanding the existence of such guidelines, individual cases will still be considered on their own merits.

(b) The Legislature, by the enactment of this article, recognizes that children have a right to share in their natural parents’ level of living. Accordingly, guidelines promulgated under the provisions of this section shall
not be based upon any schedule of minimum costs for rearing children based upon subsistence level amounts set forth by various agencies of government. The Legislature recognizes that expenditures in families are not made in accordance with subsistence level standards, but are rather made in proportion to household income, and as parental incomes increase or decrease, the actual dollar expenditures for children also increase or decrease correspondingly. In order to ensure that children properly share in their parents' resources, regardless of family structure, the guidelines shall be structured so as to provide that after a consideration of respective parental incomes, that child support will be related, to the extent practicable, to the level of living which such children would enjoy if they were living in a household with both parents present.

(c) The guidelines promulgated under the provisions of this section shall take into consideration the financial contributions of both parents. The Legislature recognizes that expenditures in households are made in aggregate form and that total family income is pooled to determine the level at which the family can live. The guidelines shall provide for examining the financial contributions of both parents in relationship to total income, so as to establish and equitably apportion the child support obligation. Under the guidelines, the child support obligation of each parent will vary proportionately according to their individual incomes.

(d) The guidelines shall be structured so as to take into consideration any preexisting support orders which impose additional duties of support upon an obligor outside of the instant case, and shall provide direction in cases involving split or shared custody.

(e) The guidelines shall have application to cases of divorce, paternity, actions for support, and modifications thereof.

(f) In promulgating the legislative rule provided for under the provisions of this section, the director shall be directed by the following legislative findings:

(1) That amounts to be fixed as child support should
not include awards for alimony, notwithstanding the fact that any amount fixed as child support will impact upon the living conditions of custodial parents;

(2) That parental expenditures on children represent a relatively constant percentage of family consumption as family consumption increases, so that as family income increases, the family's level of consumption increases, and the children should share in and benefit from this increase;

(3) That parental expenditures on children represent a declining proportion of family income as the gross income of the family increases, so that while total dollar outlays for children have a positive relationship to the family's gross income, the proportion of gross family income allotted for the children has a negative relationship to gross income;

(4) That expenditures on children vary according to the number of children in the family, and as the number of children in the family increase, the expenditures for the children as a group increase, and the expenditures on each individual child decrease; so that due to increasing economies of scale and the increased sharing of resources among family members, spending will not increase in direct proportion to the number of children;

(5) That as children grow older, expenditures on children increase, particularly during the teenage years.

§48A-2-9. Authority of the director to enter into cooperative agreements.

(a) The director may, in his discretion, enter into cooperative arrangements with state courts, federal courts, and law-enforcement officials within this state.

(b) Such agreements shall:

(1) Assist the office in implementing the provisions of this chapter, including entering into financial arrangements with such courts or officials so as to assure optimum results under the office's program of enforcement of child and spousal support, and

(2) Provide for entering into such cooperative arran-
11gements with respect to any other matters of common
12concern 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
2to locate obligors, utilizing all sources of information
3and available records and the parent locator service in
4the federal department of health and human services.
5(b) Upon entering into an agreement with the secre-
6tary of the federal department of health and human
7services for the use of that department's parent locator
8service, the office shall accept and transmit to the
9secretary requests for information to be furnished by
10such federal parent locator service to authorized
11persons. The office shall charge a reasonable fee
12sufficient to cover the costs to the state and to the federal
13department of health and human services incurred by
14reason of such requests, and shall transfer to that
15department from time to time so much of the fees
16collected as are attributable to the costs incurred by that
17department.

§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
2the following:
3(1) In establishing paternity, if necessary;
4(2) In locating an obligor residing temporarily or
5permanently in this state, against whom any action is
6being taken for the establishment of paternity or the
7enforcement of child and spousal support;
8(3) In securing compliance by an obligor residing
9temporarily or permanently in this state, with an order
10issued by a court of competent jurisdiction against such
11obligor for the support and maintenance of a child or
12children or the parent of such child or children; and
13(4) In carrying out other functions necessary to a
14program of child and spousal support enforcement.
15(b) The director shall, by legislative rule, establish
procedures necessary to extend the office’s system of withholding under section three, article five of this chapter so that such system will include withholding from income derived within this state in cases where the applicable support orders were issued in other states, in order to assure that child support owed by obligors in this state or any other state will be collected without regard to the residence of the child for whom the support is payable or the residence of such child’s custodial parent.

§48A-2-12. Disbursements of amounts collected as support.

(a) Amounts collected as child or spousal support by the office shall be distributed within ten days of receipt, except as otherwise specifically provided in this chapter. Such amounts shall, except as otherwise provided under the provisions of subsection (c) of this section, be distributed as follows:

(1) The first fifty dollars of such amounts as are collected periodically which represent monthly support payments shall be paid to the obligee without affecting the eligibility of such person’s family for assistance from the department of human services or decreasing any amount otherwise payable as assistance to such family during such month;

(2) Such amounts as are collected periodically which are in excess of any amount paid to the family under subdivision (1) of this subsection and which represent monthly support payments shall be paid by the office to the appropriate administrative unit of the department of human services to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the federal government to the extent of its participation in the financing);

(3) Such amounts as are in excess of amounts required to reimburse the department of human services under subdivision (2) of this subsection and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the obligee; and
(4) Such amounts as are in excess of amounts required to be distributed under subdivisions (1), (2) and (3) of this subsection shall be (A) paid by the office to the appropriate administrative unit of the department of human services (with appropriate reimbursement of the federal government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the department has not been reimbursed or (B) if no assistance payments have been made by the department which have not been repaid, such amounts shall be paid to the obligee.

(b)(1) Whenever a family for whom support payments have been collected and distributed under the provisions of this chapter ceases to receive assistance from the department of human services, the office shall:

(A) Continue to collect amounts of support payments which represent monthly support payments from the obligor for a period of not to exceed three months from the month following the month in which such family ceased to receive assistance from the department of human services, and pay all amounts so collected, which represent monthly support payments, to the obligee; and

(B) At the end of such three-month period, if the office is authorized to do so by the obligee on whose behalf the collection will be made, continue to collect amounts of support payments which represent monthly support payments from the obligor and pay any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other obligees who are not receiving assistance from the department of human services.

(2) So much of any amounts of support so collected as are in excess of the payments required to be made in paragraph (A), subdivision (1) of this subsection shall be distributed in the manner provided by paragraphs (A) and (B), subdivision (4), subsection (a) of this section with respect to excess amounts described in subsection
(a) of this section.

(c)(1) Notwithstanding the preceding provisions of this section, amounts collected by the office as child support for months in any period on behalf of a child for whom the department of human services is making foster care maintenance payments shall:

(A) Be paid by the office to the appropriate administrative unit of the department of human services to the extent necessary to reimburse the department for foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the federal government to the extent of its participation in financing);

(B) Be paid to the appropriate administrative unit of the department of human services to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but do not exceed the amounts required by a court order to be paid as support on behalf of the child during such period; and the department of human services may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

(C) Be paid to the appropriate administrative unit of the department of human services if any portion of the amounts collected remains after making the payments required under paragraphs (A) and (B) of this subdivision, to the extent that such portion is necessary to reimburse the department of human services, (with appropriate reimbursement to the federal government to the extent of its participation in the financing) for any past foster care maintenance payments, or payments of aid to families with dependent children which were made with respect to the child, (and with respect to which past collections have not previously been retained);

(2) Any balance of the amounts required to be paid
under the provisions of subdivision (1) shall be paid to
the appropriate administrative unit of the department
of human services, for use by the department in
accordance with paragraph (B) of this subdivision.

(d) Any payment required to be made under the
provisions of this section to a family shall be made to
the resident parent, legal guardian or caretaker relative
having custody of or responsibility for the child or
children.

(e) The director shall establish bonding requirements
for employees of the office who receive, disburse, handle,
or have access to cash.

(f) The director shall maintain methods of administra-
tion which are designed to assure that employees of the
office responsible for handling cash receipts shall not
participate in accounting or operating functions which
would permit them to conceal in the accounting records
the misuse of cash receipts: Provided, That the director
may provide for exceptions to this requirement in the
case of sparsely populated areas in this state where the
hiring of unreasonable additional staff in the local office
would otherwise be necessary.

§48A-2-13. Payment of support to the child advocate
office.

All support payments owed to an obligee who is an
applicant for or recipient of the services of the office
shall be paid to the office. Any other obligee owed a duty
of support under the terms of a support order entered
by a court of competent jurisdiction may request that
the support payments be made to the office. In such
case, the office shall proceed to receive and disburse
such support payments to or on behalf of the obligee as
provided by law.

§48A-2-14. Authorization for data processing and retrie-
val system.

In accordance with an initial and annually updated
advance data processing planning document approved
by the secretary of the federal department of health and
human services, the office may establish an automatic
data processing and retrieval system designed effectively and efficiently to assist the director and his or her employees in carrying out the provisions of this chapter.

§48A-2-15. Obtaining support from federal tax refunds.

(a) The director shall, by legislative rule, place in effect procedures necessary for the office to obtain payment of past due support from federal tax refunds from overpayments made to the secretary of the treasury of the United States, and shall take all steps necessary to implement and utilize such procedures.

(1) Such legislative rule shall, at a minimum, prescribe:

(A) The time or times at which the office must serve on the obligor or submit to the secretary of the treasury notices of past due support;

(B) The manner in which such notices must be served on the obligor or submitted to the secretary of the treasury;

(C) The necessary information which must be contained in or accompany the notices;

(D) The amount of the fee, if any, to be paid to the secretary of the treasury for the full cost of applying the procedure whereby past due support is obtained from federal tax refunds;

(E) The amount of the fee, not to exceed twenty-five dollars, which the office may collect from the obligee in a case where such obligee is an applicant for the services of the office, but is not a recipient of assistance from the department of human services in the form of aid to families with dependent children. The office shall inform such obligee in advance of the amount of the fee to be charged.

(2) When the obligor owes past due support which has been assigned to the department of human services as a condition of eligibility for aid from the department, such legislative rule shall prescribe:

(A) The minimum amount of past due support which
must have accrued before the office may act to obtain
payment of past due support from such federal tax
refunds; and

(B) The time period for which such accrued support
payments must have been due before the office may act
to obtain payment of past due support from such federal
tax refunds.

(3) When an obligor owes past due support that has
not been assigned to the department of human services
but which the office has agreed to collect for the obligee,
then in such case, withholding from federal tax refunds
will not be pursued unless the office has examined the
obligor’s pattern of payment of support and the obligee’s
likelihood of successfully pursuing other enforcement
actions, and has determined that the amount of past due
support which will be owed, at the time the withholding
is to be made, will be five hundred dollars or more. In
determining whether the amount of past due support
will be five hundred dollars or more, the office will
consider the amount of all unpaid past due support,
including that which may have accrued prior to the time
that the office first agreed to enforce the support order.

(b) Except as provided in subsection (c) of this section,
“past due support” means, for the purposes of this
section, the amount of unpaid past due support owed
under the terms of a support order to or on behalf of
a minor child, or to or on behalf of a minor child and
the parent with whom the child is living, regardless of
whether the amount has been reduced to judgment or
not.

(c) For the purposes of subdivision (3), subsection (a)
of this section, “past due support” shall not include past
due support owed to or on behalf of the parent with
whom the child is living.

(d) The legislative rule promulgated by the director
pursuant to this section shall, at a minimum, provide
that prior to notifying the secretary of treasury of past
due support, a notice to the obligor as prescribed under
subsection (a) of this section shall:
(1) Notify the obligor that a withholding will be made from any refund otherwise payable to such obligor;

(2) Instruct the obligor of the steps which may be taken to contest (A) the determination of the office that past due support is owed, or (B) the amount of the past due support; and

(3) Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(e) If the office is notified by the secretary of the treasury that the refund from which withholding is proposed to be made is based upon a joint return, and if the past due support which is involved has not been assigned to the department of human services, then the office may delay distribution of the amount withheld until such time as the secretary of the treasury notifies the office that the other person filing the joint return has received his or her proper share of the refund, but such delay shall not exceed six months.

(f) In any case in which an amount is withheld by the secretary of the treasury under the provisions of this section and paid to the office, if the office subsequently determines that the amount certified as past due was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the office shall pay the excess amount withheld to the obligor thought to have owed the past due support, or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return.

§48A-2-16. Obtaining support from state income tax refunds.

(a) The tax commissioner shall place in effect procedures necessary for the office to obtain payment of past due support from state income tax refunds from overpayments made to the tax commissioner pursuant to the provisions of article twenty-one, chapter eleven of this code.
(b) The director shall, by legislative rule, place in effect procedures necessary for the office to enforce a support order through a notice to the tax commissioner which will cause any refund of state income tax which would otherwise be payable to an obligor to be reduced by the amount of overdue support owed by such obligor.

(1) Such legislative rule shall, at a minimum, prescribe:

(A) The time or times at which the office must serve on the obligor or submit to the tax commissioner notices of past due support;

(B) The manner in which such notices must be served on the obligor or submitted to the tax commissioner;

(C) The necessary information which must be contained in or accompany the notices;

(D) The amount of the fee, if any, to be paid to the tax commissioner for the full cost of applying the procedure whereby past due support is obtained from state income tax refunds; and

(E) The amount of the fee, not to exceed twenty-five dollars, which the office may deduct from the obligor's state income tax refund in a case where the obligee is an applicant for the services of the office, but is not a recipient of assistance from the department of human services in the form of aid to families with dependent children.

(2) Withholding from state income tax refunds will not be pursued unless the office has examined the obligor's pattern of payment of support and the obligee's likelihood of successfully pursuing other enforcement actions, and has determined that the amount of past due support which will be owed, at the time the withholding is to be made, will be one hundred dollars or more. In determining whether the amount of past due support will be one hundred dollars or more, the office will consider the amount of all unpaid past due support, including that which may have accrued prior to the time that the office first agreed to enforce the support order.
(c) The director of the child advocate office shall enter into agreements with the secretary of the treasury and the tax commissioner, as well as other appropriate governmental agencies, to secure information relating to the social security number or numbers and the address or addresses of any obligor, so as to provide notice between such agencies to aid the office in requesting state income tax deductions, and to aid the tax commissioner in enforcing such deductions. In each such case, the tax commissioner, in processing the state income tax deduction, will notify the office of the obligor's home address and social security number or numbers. The office will provide this information to any other state involved in processing the support order.

(d) For the purposes of this section, "past due support" means the amount of unpaid past due support owed under the terms of a support order to or on behalf of a child, or to or on behalf of a minor child and the parent with whom the child is living, regardless of whether the amount has been reduced to judgment or not.

(e) The office may, under the provisions of this section, enforce the collection of past due support on behalf of a child who has reached the age of majority.

(f) The legislative rule promulgated by the director pursuant to the provisions of this section shall, at a minimum, provide that prior to notifying the tax commissioner of past due support, a notice to the obligor as prescribed under subsection (a) of this section shall:

(1) Notify the obligor that a withholding will be made from any refund otherwise payable to such obligor;

(2) Instruct the obligor of the steps which may be taken to contest the determination of the office that past due support is owed or the amount of the past due support; and

(3) Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(g) If the office is notified by the tax commissioner
that the refund from which withholding is proposed to 
be made is based upon a joint return, and if the past 
due support which is involved has not been assigned to 
the department of human services, then the office may 
delay distribution of the amount withheld until such 
time as the tax commissioner notifies the office that the 
other person filing the joint return has received his or 
her proper share of the refund, but such delay shall not 
exceed six months.

(h) In any case in which an amount is withheld by the 
tax commissioner under the provisions of this section 
and paid to the office, if the office subsequently 
determines that the amount certified as past due was in 
excess of the amount actually owed at the time the 
amount withheld is to be distributed, the office shall pay 
the excess amount withheld to the obligor thought to 
have owed the past due support, or, in the case of 
amounts withheld on the basis of a joint return, jointly 
to the parties filing such return.

(i) The director shall, by legislative rule, structure the 
time and method by which all amounts received by the 
office, as payments of past due support from state 
income tax refunds, are distributed. In a case where an 
obligee is an applicant for the services of the office, but 
is not a current recipient of assistance from the 
department of human services in the form of aid to 
families with dependent children, such method of 
distribution shall give priority to the obligee and the 
family of the obligee by paying such amounts to the 
obligee first rather than using them first to reimburse 
the department of human services.

§48A-2-17. Obtaining support from unemployment compen-
sation benefits.

(a) The director shall determine on a periodic basis 
whether individuals receiving unemployment compensa-
tion owe child support obligations which are being 
enforced or have been requested to be enforced by the 
office. If an individual is receiving such compensation 
and owes any such child support obligation which is not 
being met, the office shall enter into an agreement with
such individual to have specified amounts withheld
otherwise payable to such individual, and shall submit
a copy of such agreement to the department of employ-
ment security. In the absence of such agreement, the
office shall bring legal process to require the withhold-
ing of amounts from such compensation.

(b) The director shall enter into a written agreement
with the department of employment security for the
purpose of withholding unemployment compensation
from individuals with unmet support obligations being
enforced by the office. The office shall agree only to a
withholding program that it expects to be cost effective,
and, as to reimbursement, shall agree only to reimburse
the department of employment security for its actual,
incremental costs of providing services to the office.

(c) The director shall establish and use written
criteria for selecting cases to pursue through the
withholding of unemployment compensation for support
purposes. These criteria shall be designed to ensure
maximum case selection and minimal discretion in the
selection process.

(d) The director shall, not less than annually, provide
a receipt to an individual who requests a receipt for the
support paid through the withholding of unemployment
compensation, if receipts are not provided through other
means.

(e) The director shall, through direct contact with the
department of employment security, process cases
through the department of employment security in this
state, and shall process cases through support enforce-
ment agencies in other states. The director shall receive
all amounts withheld by the department of employment
security in this state, forwarding any amounts withheld
on behalf of support enforcement agencies in other
states to those agencies.

(f) The director shall, not less than annually, review
and document program operations, including case
selection criteria established under subsection (c) of this
section, and the costs of the withholding process versus
the amounts collected and, as necessary, modify proce-
dures and renegotiate the services provided by the
department of employment security to improve program
and cost effectiveness.

(g) For the purposes of this section:

(1) "Legal process" means a writ, order, summons or
other similar process in the nature of garnishment
which is issued by a court of competent jurisdiction or
by an authorized official pursuant to an order of such
court or pursuant to state or local law.

(2) "Unemployment compensation" means any com-
pensation under state unemployment compensation law
(including amounts payable in accordance with agree-
ments under any federal unemployment compensation
law). It includes extended benefits, unemployment
compensation for federal employees, unemployment
compensation for ex-servicemen, trade readjustment
allowances, disaster unemployment assistance, and
payments under the Federal Redwood National Park
Expansion Act.


(a) The director shall determine on a periodic basis
whether individuals receiving workers' compensation
benefits owe child support obligations which are being
enforced or have been requested to be enforced by the
office. If an individual is receiving such compensation
and owes any such child support obligation which is not
being met, the office shall enter into an agreement with
such individual to have specified amounts withheld
otherwise payable to such individual, and shall submit
a copy of such agreement to the workers' compensation
commissioner. In the absence of such agreement, the
office shall bring legal process to require the withhold-
ing of amounts from such compensation.

(b) The director shall enter into a written agreement
with the workers' compensation commissioner for the
purpose of withholding workers' compensation benefits
from individuals with unmet support obligations being
enforced by the office. The office shall agree only to a
withholding program that it expects to be cost effective, and, as to reimbursement, shall agree only to reimburse the workers' compensation commissioner for the commissioner's actual, incremental costs of providing services to the support enforcement agency.

(c) The director shall establish and use written criteria for selecting cases to pursue through the withholding of workers' compensation benefits for support purposes. These criteria shall be designed to ensure maximum case selection and minimal discretion in the selection process.

(d) The director shall, not less than annually, provide a receipt to an individual who requests a receipt for the support paid through the withholding of workers' compensation benefits, if receipts are not provided through other means.

(e) The director shall, through direct contact with the workers' compensation commissioner, process cases through the workers' compensation commissioner in this state, and shall process cases through support enforcement agencies in other states. The director shall receive all amounts withheld by the workers' compensation commissioner in this state, forwarding any amounts withheld on behalf of support enforcement agencies in other states to those agencies.

(f) The director shall, not less than annually, review and document program operations, including case selection criteria established under subsection (c) of this section, and the costs of the withholding process versus the amounts collected and, as necessary, modify procedures and renegotiate the services provided by the workers' compensation commissioner to improve program and cost effectiveness.

(g) For the purposes of this section:

(1) "Legal process" means a writ, order, summons or other similar process in the nature of garnishment which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to state or local law.
§48A-2-19. Providing information to credit reporting agencies.

The director, shall by legislative rule, establish procedures whereby information regarding the amount of overdue support owed by an obligor residing in this state will be made available to any consumer reporting agency upon the request of the agency: Provided, That such legislative rule shall provide for the following:

(1) If the amount of overdue support is less than one thousand dollars, such information shall not be available;

(2) If the amount of overdue support is one thousand dollars or more, any such information with respect to an obligor shall be made available under such procedures only after notice has been sent to such obligor of the proposed action, and such obligor has been given a reasonable opportunity to contest the accuracy of such information; and

(3) The imposition of a fee for furnishing such information, not to exceed the actual cost thereof.

§48A-2-20. Publicizing child support enforcement services.

The child advocate office shall regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the provisions of this chapter and otherwise, including information as to any application fees for such services and a toll-free telephone number and a postal address at which further information may be obtained.


The director shall, by legislative rule, describe the circumstances under which fees charged by the office may be waived, and such rule shall provide for the waiver of any fee, in whole or in part, when such fee
would otherwise be required to be paid under the provisions of this chapter.


The office and the clerks of the circuit courts shall, on or before the last day of each month, transmit all fees and costs received for the services of the office or the family law master under this chapter to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "family law masters fund", which is hereby created. All moneys collected and received under this chapter and paid into the state treasury and credited to the "family law masters fund" shall be used solely for paying the costs associated with the duties imposed upon the family law masters under the provisions of this chapter which require activities by the masters which are not subject to being matched with federal funds or subject to reimbursement by the federal government, and requisitions shall be drawn upon the fund only for such purposes. Such moneys shall not be treated by the auditor and treasurer as part of the general revenue of the state.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-1. Purposes; how article to be construed.

(a) The purposes of this article are:

(1) To enumerate and describe the functions and duties of the children's advocate as an employee of the child advocate office;

(2) To ensure that procedures followed by the children's advocate will protect the best interests of children
in domestic relations matters;
(3) To encourage and assist parties voluntarily to
resolve contested domestic relations matters by
agreement;
(4) To compel the enforcement of visitation and
custody orders; and
(5) To compel the enforcement of support orders,
thereby ensuring that persons legally responsible for the
care and support of children assume their legal obliga-
tions and reduce the financial cost to this state of
providing public assistance funds for the care of
children.
(b) This article shall be construed to facilitate the
resolution of domestic relations matters.
§48A-3-2. Placement of children's advocates throughout
the state; supervision; office procedures.
(a) The child advocate office shall employ twenty
employees in the position of children's advocate, and the
offices of the children's advocates shall be distributed
geographically so as to provide an office for each of the
following areas of the state:
(1) The counties of Brooke, Hancock and Ohio;
(2) The counties of Marshall, Tyler and Wetzel;
(3) The counties of Pleasants, Ritchie, Wirt and Wood;
(4) The counties of Calhoun, Jackson and Roane;
(5) The counties of Mason and Putnam;
(6) The counties of Cabell and Wayne;
(7) The counties of McDowell and Wyoming;
(8) The counties of Logan and Mingo;
(9) The counties of Kanawha, Lincoln and Boone
(10) The county of Raleigh;
(11) The counties of Mercer, Monroe and Summers;
(12) The counties of Fayette and Nicholas;
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(13) The counties of Greenbrier and Pocahontas;

(14) The counties of Braxton, Clay, Gilmer and Webster;

(15) The counties of Doddridge, Harrison, Lewis and Upshur;

(16) The counties of Marion and Taylor;

(17) The counties of Monongalia and Preston;

(18) The counties of Barbour, Randolph and Tucker;

(19) The counties of Grant, Hampshire, Hardy, Mineral and Pendleton; and

(20) The counties of Berkeley, Jefferson and Morgan.

(b) Each children's advocate shall be appointed by the director of the child advocate office. The children's advocates shall be duly qualified attorneys licensed to practice in the courts of this state.

(c) The children's advocate is an employee of the child advocate office.

§48A-3-3. Duties of the children's advocate.

(a) Before adjudication of a domestic relations matter, the children's advocate shall have the following duties:

(1) To provide an informational pamphlet, designed in consultation with the director, to each party to a domestic relations matter. The informational pamphlet shall explain the procedures of the court and the children's advocate; the duties of the children's advocate; the rights and responsibilities of the parties; and the availability of human services in the community. The informational pamphlet shall be provided as soon as possible after the filing of a complaint or other initiating pleading. Upon request, a party shall receive an oral explanation of the informational pamphlet from the office of the children's advocate.

(2) To investigate all relevant facts, and to make a written report and recommendation to the parties and to the court regarding child custody or visitation, or both, if there is a dispute as to child custody or
visitation, or both, or if ordered to do so by the court. The investigation may include reports and evaluations by outside persons or agencies if requested by the parties or the court, and shall include documentation of alleged facts, if practicable.

(3) To investigate all relevant facts and to make a written report and recommendation to the parties and to the court regarding child or spousal support. The investigation may include reports and evaluations by outside persons or agencies if requested by the parties or the court, and shall include documentation of alleged facts, if practicable. The child support formula promulgated pursuant to the provisions of section eight, article two of this chapter shall be used as a guideline in recommending child support: Provided, That whenever the recommended child support falls outside the guidelines, the children's advocate shall file written reviewable reasons setting forth findings of fact sufficient to justify the recommendation.

(b) The children's advocate shall act to establish the paternity of every child born out of wedlock for whom paternity has not been established, when such child's primary caretaker is an applicant for or recipient of aid to families with dependent children, and when such primary caretaker has assigned to the department of human services any rights to support for the child which might be forthcoming from the putative father: Provided, That if the children's advocate is informed by the commissioner of the department of human services or his or her authorized employee that it has been determined that it is against the best interest of the child to establish paternity, the children's advocate shall decline to so act. The children's advocate, upon the request of any primary caretaker of a child born out of wedlock, regardless of whether such primary caretaker is an applicant or recipient of aid to families with dependent children, shall undertake to establish the paternity of such child.

(c) The children's advocate shall undertake to secure support for any individual who is receiving aid to families with dependent children when such individual
has assigned to the department of human services any
rights to support from any other person such individual
may have: Provided, That if the children's advocate is
informed by the commissioner of the department of
human services or his or her authorized employee that
it has been determined that it is against the best
interests of a child to secure support on the child's
behalf, the children's advocate shall decline to so act.
The children's advocate, upon the request of any
individual, regardless of whether such individual is an
applicant or recipient of aid to families with dependent
children, shall undertake to secure support for the
individual. If circumstances require, the children's
advocate shall utilize the provisions of article seven of
this chapter and any other reciprocal arrangements
which may be adopted with other states for the
establishment and enforcement of support obligations,
and if such arrangements and other means have proven
ineffective, the children's advocate may utilize the
federal courts to obtain and enforce court orders for
support.

(d) The children's advocate shall pursue the enforce-
ment of support orders through the withholding from
income of amounts payable as support:

(1) Without the necessity of an application from the
obligee in the case of a support obligation owed to an
obligee to whom services are already being provided
under the provisions of this chapter; and

(2) On the basis of an application for services in the
case of any other support obligation arising from a
support order entered by a court of competent
jurisdiction.

(e) The children's advocate may decline to commence
an action to obtain an order of support under the
provisions of section one, article five of this chapter if
an action for divorce, annulment, or separate mainte-
nance is pending, or the filing of such action is
imminent, and such action will determine the issue of
support for the child: Provided, That such action shall
be deemed to be imminent if it is proposed by the
obligee to be commenced within the twenty-eight days
next following a decision by the children's advocate that
an action should properly be brought to obtain an order
for support.

(f) If the child advocate office, through the children's
advocate, shall undertake paternity determination
services, child support collection, or support collection
services for a spouse or former spouse upon the written
request of an individual who is not an applicant or
recipient of assistance from the department of human
services, the office may impose an application fee for
furnishing such services. Such application fee shall be
in a reasonable amount, not to exceed twenty-five
dollars, as determined by the director: Provided, That
the director may fix such amount at a higher or lower
rate which is uniform for this state and all other states
if the secretary of the federal department of health and
human services determines that a uniform rate is
appropriate for any fiscal year to reflect increases or
decreases in administrative costs. Any cost in excess of
the application fee so imposed may be collected from the
obligor who owes the child or spousal support obligation
involved.

§48A-3-4. Statements of account.

The child advocate office shall provide annually to
each obligor and obligee, without charge, one statement
of account upon request. Additional statements of
account shall be provided at a fee not to exceed two
dollars. Statements provided under this subsection are
in addition to statements provided for judicial hearings.

§48A-3-5. Enforcement of custody and visitation orders.

With regard to a custody or visitation order, the office
shall, upon receipt of a written statement setting forth
the specific facts alleged to constitute a violation,
attempt to mediate the issues involved and reach a
settlement between the parties. If such mediation efforts
are unsuccessful, the children's advocate shall initiate
enforcement proceedings, if the children's advocate
determines that there is reason to believe a violation of
a custody or visitation order has occurred. Upon request,
the office of the children's advocate shall assist a person
in preparing a written statement alleging a violation of
a custody or visitation order.

§48A-3-6. Investigations of support and visitation orders;
notice and hearing upon modifications; petition for change.

(a) In every case in which a final judgment containing
a child support order has been entered in a domestic
relations matter, the children's advocate shall from time
to time examine the records and conduct any investiga-
tion considered necessary to determine whether the
child support amount should be increased or decreased
in view of a temporary or permanent change in physical
custody of the child which the court has not ordered,
increased need of the child or changed financial
conditions, as follows:

(1) If a child is being supported in whole or in part
by assistance payments from the department of human
services, at the initiative of the children's advocate, if
there are reasonable grounds to believe that the amount
of child support should be modified, but not less than
once each two years.

(2) Upon receipt of a written request from an obligee
or an obligor. The children's advocate may not be
required to investigate more than one request received
from a party each two years. Within sixty days after
receipt of a request under this subdivision, the office of
the children's advocate shall complete its investigation
and make any resulting recommendations and support-
ing documents available as required in section three of
this article.

(b) After a final judgment containing a visitation
order has been entered in a domestic relations matter,
if there is a dispute as to visitation which is not resolved
voluntarily by the parties through a meeting with the
office of the children's advocate, the children's advocate
may petition the court for enforcement or modification
of the visitation order. A written report and recommen-
dation shall accompany the petition.
(c) Before a hearing on a proposed modification, the office shall notify both parties of the proposed modification and afford the parties an opportunity for review and comment.

(d) The office shall petition the court for modification of the amount of a child support order if modification is determined to be necessary under subsection (a). A written report and recommendation shall accompany the petition.

(e) As used in this section, “changed financial conditions” means increases or decreases in the resources available to either party from any source. Changed financial conditions includes, but is not limited to, the application for or receipt of any form of public assistance payments, unemployment compensation and workers’ compensation.

§48A-3-7. Vacancies; interim children’s advocate.

(a) If the position of children’s advocate becomes vacant for any reason, the director shall appoint a person to the position of children’s advocate not later than six months after the vacancy occurs.

(b) If necessary, the director may appoint an interim children’s advocate to serve for not longer than six months until a children’s advocate is appointed pursuant to this section.

§48A-3-8. Compensation; expenses.

The compensation and expenses of the children’s advocate and of the employees of the office and all operating expenses incurred by the office shall be fixed 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.

(a) The governor shall appoint family law masters in such numbers and to serve such areas of the state as provided for under the provisions of this article. The appointment of an individual as a master shall be for a term of four years. Upon the expiration of his or her term, a family law master may continue to perform the duties of the office until his or her successor is appointed, or for sixty days after the date of the expiration of the master's term, whichever is earlier.

(b) No individual may be appointed to serve as a family law master unless he or she has been for at least five years a member in good standing of the West Virginia state bar association.

(c) Removal of a master during the term for which he or she is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability.

(d) A family law master may not engage in the practice of law, and may not engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of his or her duties as a judicial officer.

(e) All family law masters, and all necessary clerical and secretarial assistants employed in the offices of family law masters shall be deemed to be officers and employees in the judicial branch of state government. The director of the child advocate office and the commissioner of the department of human services shall enter into an agreement with the administrative office of the supreme court of appeals whereby the office and the department shall contract to pay the administrative office of the supreme court of appeals for the services of the family law masters required to be furnished under the provisions of this chapter which are not otherwise payable from the family law masters fund.
created under the provisions of section twenty-two, article two of this chapter.

(f) A family law master appointed under the provisions of this article shall receive as full compensation for his or her services an annual salary of thirty-five thousand dollars. The secretary-clerk of the family law master shall receive an annual salary of fifteen thousand dollars. Disbursement of salaries shall be made by or pursuant to the order of the director of the administrative office of the supreme court of appeals.

(g) Family law masters serving under the provisions of this article shall be allowed their actual and necessary expenses incurred in the performance of their duties. Such expenses and compensation shall be determined and paid by the director of the administrative office of the supreme court of appeals under such regulations as he or she may prescribe with the approval of the supreme court of appeals.

(h) The offices of the family law masters shall be distributed geographically so as to provide an office of the family law master for each of the following areas:

(1) The counties of Brooke, Hancock and Ohio;
(2) The counties of Marshall, Tyler and Wetzel;
(3) The counties of Pleasants, Ritchie, Wirt and Wood;
(4) The counties of Calhoun, Jackson and Roane;
(5) The counties of Mason and Putnam;
(6) The counties of Cabell and Wayne;
(7) The counties of McDowell and Wyoming;
(8) The counties of Logan and Mingo;
(9) The counties of Kanawha, Lincoln and Boone;
(10) The county of Raleigh;
(11) The counties of Mercer, Monroe and Summers;
(12) The counties of Fayette and Nicholas;
(13) The counties of Greenbrier and Pocahontas;
(14) The counties of Braxton, Clay, Gilmer and Webster;
(15) The counties of Doddridge, Harrison, Lewis and Upshur;
(16) The counties of Marion and Taylor;
(17) The counties of Monongalia and Preston;
(18) The counties of Barbour, Randolph and Tucker;
(19) The counties of Grant, Hampshire, Hardy, Mineral and Pendleton; and
(20) The counties of Berkeley, Jefferson and Morgan.

The governor shall appoint two masters to the office of the family law master for the area of Kanawha, Lincoln and Boone counties. In each of the other areas defined by this subsection, the governor shall appoint one person as family law master for such area.

(i) The circuit court or the chief judge thereof shall refer to the master the following matters for hearing to be conducted in accordance with the provisions of section two of this article:

(1) Actions to obtain orders of support brought under the provisions of section one, article five of this chapter;
(2) All actions to establish paternity under the provisions of article six of this chapter except such actions wherein either or both of the parties have demanded a trial by jury of the law and the facts by the circuit court;
(3) All motions for child or spousal support pendente lite;
(4) All actions and motions wherein child custody or child visitation is in issue;
(5) All petitions for modification of an order involving child custody, child visitation or child support or spousal support; and
(6) All uncontested divorce actions wherein the defending party has failed to answer or appear, or
having made an appearance has filed an answer
admitting irreconcilable differences or grounds for
divorce, has withdrawn his or her answer or other
responsive pleading, or has filed a notice of waiver of
further proceedings, and wherein all issues except the
question of whether or not a divorce should be granted
have been resolved;

(7) On and after the first day of September, one
thousand nine hundred eighty-six, all contested divorce
actions.

(j) A master shall hear, in addition to the matters
described in subsection (i) of this section, such other
domestic relation matters as may be referred to the
master by the court: Provided, That a master shall not
hear a case wherein an obligor is charged with criminal
contempt, when such obligor has not waived his right
to trial by jury.

(k) The fees for hearings before a master shall be paid
prior to the hearing in question unless a party is excused
from payment thereof under the provisions of section
one, article two, chapter fifty-nine of this code.

(l) Fees for hearings before a master shall be taxed
as court costs which costs may be assessed against either
party or between the parties, in the discretion of the
master. The assessment of court costs shall be included
as findings in each case of a master's order. The fees
for hearings before a master shall be as follows:

(1) For an action to establish an order of support, fifty
dollars;

(2) For an action to establish paternity, one hundred
dollars;

(3) For a motion for child or spousal support pendente
lite, fifty dollars;

(4) For an action to establish custody or visitation,
fifty dollars;

(5) For a petition for modification of an order
involving child custody, child visitation, child support or
spousal support, fifty dollars;
For an uncontested divorce action, one hundred dollars;

(7) For a final hearing in a contested divorce action, thirty dollars per hour.

(m) Persons entitled to notice of a master's hearing shall be timely informed of:

(1) The time, place and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) The matters of fact and law asserted.

(n) The master shall give all interested parties opportunity for the submission and consideration of facts, arguments, offers of settlement or proposals of adjustment when time, the nature of the proceedings and the public interest permit. To the extent that the parties are unable to determine a controversy by consent, the master shall provide the parties a hearing and decision in accordance with the provisions of sections two and three of this article.

(o) The master who presides at a hearing pursuant to section two of this article shall enter a master's final order as required by section four of this article. Except to the extent required for disposition of ex parte matters as authorized by this chapter, a master may not consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; nor shall the master attempt to supervise or direct an employee or agent engaged in the performance of investigative or prosecuting functions for a prosecuting attorney, the department of human services or any other agency or political subdivision of this state.

§48A-4-2. Hearing procedures.

(a) This section applies, according to the provisions thereof, to hearings required by section one of this article to be conducted in accordance with this section.

(b) A master appointed under the provisions of section one of this article shall preside at the hearing. The
functions of the master shall be conducted in an impartial manner. A master may at any time disqualify himself or herself. Upon such disqualification, or upon the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a master, the circuit court or the chief judge thereof may appoint a temporary master or the circuit court may receive the evidence and determine the matter.

(c) A master presiding at a hearing under the provisions of this chapter may:

1. Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties, and otherwise take testimony and establish a record.
2. Rule on offers of proof and receive relevant evidence;
3. Take depositions or have depositions taken when the ends of justice may be served;
4. Regulate the course of the hearing;
5. Hold conferences for the settlement or simplification of issues by consent of the parties;
6. Dispose of procedural requests or similar matters;
7. Accept voluntary acknowledgments of support liability or paternity;
8. Accept stipulated agreements;
9. Prepare default orders for entry if the person against whom an action is brought does not respond to notice or process within the time required;
10. Enter master's final orders in accordance with the provisions of this article; and
11. Take other action authorized by general order of the circuit court or the chief judge thereof consistent with this chapter.

(d) Except as otherwise provided by law, a moving party has the burden of proof on a particular question presented. Any oral or documentary evidence may be
received, but the master shall exclude irrelevant, immaterial, or unduly repetitious evidence. A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In determining claims for money due or the amount of payments to be made, when a party will not be prejudiced thereby, the master may adopt procedures for the submission of all or part of the evidence in written form.

(e) Hearings before a master shall be recorded electronically. When requested by either of the parties, a master shall make a transcript, verified by oath, of each hearing held. Unless otherwise ordered by the master, the cost of preparing a transcript shall be apportioned equally between the parties.

(f) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for decision in accordance with section three of this article, and on payment of lawfully prescribed costs, unless excused, shall be made available to the parties. When a master's final order rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§48A-4-3. Default orders; temporary orders.

(a) In any proceeding in which the amount of support is to be established, if the obligor has been served with notice of a hearing before a master and does not enter an appearance, the family law master shall enter a master's final order which shall fix support in an amount at least equal to the amount paid as public assistance under section four, article three, chapter nine of this code if the obligee or custodian receives public assistance, or in an amount at least equal to the amount that would be paid as public assistance where the obligee or custodian does not receive public assistance, unless the family law master has information by which
to determine the amount to be fixed in the default order in accordance with the child support guidelines.

(b) A master who presides at a hearing under the provisions of section two of this article is authorized to enter interlocutory orders and temporary support orders which, when entered, shall be enforceable and have the same force and effect under law as a final order, judgment or decree of the circuit court. Such orders shall not be reviewable by the circuit court except upon a petition for review of a master's final order entered in the matter.

(c) All orders prepared by a master shall provide for automatic withholding from income of the obligor if arrearages in support occur, if no such provision already exists in prior orders.

§48A-4-4. Master's final orders.

(a) This section applies, according to the provisions thereof, when a hearing has been conducted in accordance with section two of this article.

(b) A master who has presided at the hearing pursuant to section two of this article shall enter with the clerk of the court a master's final order. Before the master's final order is entered, the master may, in his discretion, require the parties to submit proposed findings and conclusions and the supporting reasons therefor.

(c) A copy of each report, recommendation, and any supporting documents or a summary of supporting documents, prepared or used by the children's advocate or an employee of the child advocate office, and all documents introduced into evidence before the master, shall be made available to the attorney for each party and to each of the parties after the master has concluded the reception of evidence. In a child custody dispute the parties shall be informed of whether a custody preference expressed by the child was considered, evaluated, and determined by the court, but the parties shall not be informed of the preference expressed by the child. If a guardian is appointed for a child, the guardian shall
be informed whether a custody preference expressed by
the child was considered, evaluated, and determined by
the court, and, if so, the preference expressed. The
manner and time within which this material is made
available shall be determined by supreme court rule.

(d) All master’s final orders shall include a statement
of findings and conclusions, and the reasons or basis
therefor, on all the material issues of fact, law, or
discretion presented on the record and shall embody the
appropriate sanction, relief, or denial thereof.

(e) A master’s final order shall be fully enforceable
upon entry by the master. If no petition for review is
timely filed as otherwise provided for in this article, the
master shall prepare a final order for entry by the court,
which such final order may either affirm the master’s
final order or may set forth the terms of the master’s
final order. If the circuit court shall fail to enter such
order, the master’s final order shall continue to be of full
force and effect and shall be fully enforceable as though
such order had been entered by the court.

§48A-4-5. Circuit court review of master’s action or
master’s final order.

A person who alleges that he or she will suffer a legal
wrong because of the action of a master, or will be
adversely affected or aggrieved by a master’s final
order, is entitled to review of the proceedings. The
master’s final order is the subject of review by the
circuit court, and a preliminary or procedural action or
ruling not directly reviewable is subject to review only
upon the review of the master’s final order by the circuit
court.

§48A-4-6. Procedure for review by circuit court.

(a) Within ten days after the entry of a master’s final
order, any party may file exceptions thereto in a petition
requesting that the action be reviewed by the circuit
court upon the master’s report. At the time of filing the
petition, a copy of the petition for review shall be served
on all parties to the proceeding, in the same manner as
pleadings subsequent to an original complaint are
served under rule five of the rules of civil procedure for trial courts of record.

(b) Not more than ten days after the filing of the petition for review, a responding party wishing to file a cross-petition that would otherwise be untimely may file, with proof of service on all parties, a cross-petition for review.

§48A-4-7. Form of petition for review.

The petition for review shall contain, in the order indicated:

(a) A table of contents and table of authorities.

(b) A list of exceptions in the form of questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions should be short and concise and should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the court.

(c) Citations for the constitutional provisions, statutes and regulations which the case involves.

(d) A concise statement of the case containing the facts material to a consideration of the questions presented.

(e) A direct and concise argument amplifying the reasons relied upon for remanding the case.

§48A-4-8. Brief in opposition to a petition for review.

(a) A respondent shall have ten days after the filing of a petition within which to file an opposing brief disclosing any matter or ground why the master's final order should not be remanded by the court.

(b) No motion by a respondent to dismiss a petition for review will be received.

(c) Within seven days after the filing of a brief in opposition, a reply brief addressed to arguments first raised in the brief in opposition may be filed by any
petitioner.

(d) Any party may file a supplemental brief at any time while a petition for review is pending, calling attention to new cases or legislation or other intervening matter not available at the time of the party's last filing.

§48A-4-9. Circuit court review of master's final order.

(a) The circuit court shall proceed to a review of the master's final order when a petition has been filed within ten days of the entry of a master's final order.

(b) To the extent necessary for decision and when presented, the circuit court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the appropriateness of the terms of the master's final order.

(c) If a petition for review has been timely filed, the circuit court shall examine the master's final order, and may enter an order affirming the master's final order or may remand the case upon a finding that the master's final order is:

(1) Arbitrary, capricious, an abuse of discretion, or otherwise not in conformance with the law;

(2) Contrary to constitutional right, power, privilege, or immunity;

(3) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(4) Without observance of procedure required by law;

or

(5) Unsupported by substantial evidence.

(d) In making its determinations under this section, the circuit court shall review the whole record or those parts of it cited by a party.

(e) The order of the circuit court affirming or remanding shall be entered not later than twenty-one days after the time for filing pleadings or briefs has expired.

(f) If a case is remanded by the circuit court, the
ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-1. Action to obtain an order for support of minor child.

(a) An action may be brought in circuit court to obtain an order for the support of a minor child when:

(1) Such child has a parent and child relationship with an obligor;

(2) Such obligor is not the primary caretaker or guardian of the child;

(3) The obligor is not meeting an obligation to support the child;

(4) An enforceable order for the support of the child by the obligor has not been entered by a court of competent jurisdiction; and

(5) There is no pending action for divorce, separate maintenance, or annulment in which the obligation of support owing from the obligor to the child is at issue.

(b) An action may be brought under the provisions of subsection (a) of this section by:

(1) A custodial parent of a child, when the divorce order or other order which granted custody did not make provision for the support of the child by the obligor;

(2) A primary caretaker of a child;

(3) A guardian of the property of a child or the committee for a child; or
(4) The department of human services, when the department is providing assistance on behalf of the child in the form of aid to families with dependent children, and an assignment of any right to support has been assigned to the department.

(c) An action under the provisions of this section may be brought in the county where the obligee, the obligor or the child resides.

(d) If an action for child support is brought under the provisions of this section by an obligee against his or her spouse, such obligee may also seek spousal support from the obligor, unless such support has been previously waived by agreement or otherwise.

(e) On and after the effective date of this section, every order issued or modified under the provisions of this section shall include a provision for automatic withholding from income of the obligor if arrearages occur, in order to facilitate income withholding as a means of collecting support when such arrearages occur. Each such order shall contain language authorizing income withholding to commence without further court action, under the following conditions:

(1) If the order requires payments to be made in monthly installments, when the support payments required by such order are thirty days or more in arrears;

(2) If the order requires payments to be made in weekly or bi-weekly installments, when the support payments required by such order are twenty-eight days or more in arrears; or

(3) If the obligor requests the child advocate office to commence income withholding.

(f) At any time after the entry of an order for support, the court may, upon the verified petition of an obligee or the obligor, revise or alter such order, and make a new order, as the altered circumstances or needs of a child, an obligee, or the obligor may render necessary to meet the ends of justice.
§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

(a) When an obligor is in arrears in the payment of support which is required to be paid by the terms of an order entered or modified by a court of competent jurisdiction, an obligee may file an “Affidavit of Accrued Support” with the clerk of the circuit court, setting forth the particulars of such arrearage, and requesting a writ of execution, suggestion or suggestee execution. If the duty of support is based upon a foreign support order, the obligee shall first register the foreign support order with the clerk in the same manner as such orders are registered in actions under the revised uniform reciprocal enforcement of support act, sections thirty-four, thirty-five, thirty-seven, and thirty-eight, article seven of this chapter: Provided, That a copy of the reciprocal enforcement of support law of the state in which the order was made need not be filed with the clerk.

(b) The affidavit may be filed in the county wherein the obligee or the obligor resides, or where the obligor’s source of income is located.

(c) The affidavit may be filed when a payment required by such order has been delinquent, in whole or in part, for a period of fourteen days.

(d) The affidavit shall:

(1) Identify the obligee and obligor by name and address, and shall list the obligor’s social security number or numbers, if known;

(2) Name the court which entered the support order and set forth the date of such entry;

(3) State the total amount of accrued support which has not been paid by the obligor;

(4) List the date or dates when support payments should have been paid but were not, and the amount of each such delinquent payment; and

(5) If known, the name and address of the obligor’s source of income.
(e) Upon receipt of the affidavit, the clerk shall issue a writ of execution, suggestion or suggestee execution, and shall mail a copy of the affidavit and a notice of the filing of the affidavit to the obligor, at his last known address. If the children's advocate is not acting on behalf of the obligee in filing the affidavit, the clerk shall forward a copy of the affidavit and the notice of the filing to the children's advocate.

(f) The notice provided for in subsection (e) of this section shall inform the obligor that if he or she desires to contest the affidavit on the grounds that the amount claimed to be in arrears is incorrect or that a writ of execution, suggestion or suggestee execution is not proper because of mistakes of fact, he or she must, within fourteen days of the date of the notice, inform the children's advocate in writing of the reasons why the affidavit is contested and must request a meeting with the children's advocate.

(g) Upon being informed by an obligor that he or she desires to contest the affidavit, the children's advocate shall inform the court of such fact, and the court shall require the obligor to give security, post a bond, or give some other guarantee to secure payment of overdue support.

(h) The clerk of the circuit court shall make available form affidavits for use under the provisions of this section. Such form affidavits shall be provided to the clerk by the child advocate office. The notice of the filing of an affidavit shall be in a form prescribed by the child advocate office.

§48A-5-3. Withholding from income of amounts payable as support.

(a) An order which provides for the withholding of amounts payable as support shall be enforced by the children's advocate in accordance with the provisions of this section. Every support order entered by a circuit court or a magistrate of this state prior to the effective date of this section and every support order entered by a court of competent jurisdiction of another state shall be considered to provide for an order of income
withholding by operation of law, notwithstanding the
fact that such support order does not in fact provide for
such an order of withholding. Under such orders, income withholding shall be implemented under the
same circumstances and enforced in the same manner
as in the case of orders of withholding which are
included in support orders entered after the effective
date of this section.

(b)(1) When required to pursue the enforcement of an
order of support through the withholding of income in
accordance with the provisions of subsection (d), section
three, article three of this chapter, the children's
advocate shall cause the mailing of a notice pursuant to
this section when the support payments required by the
order are in arrears a specific number of days, as
follows:

(A) If the order requires support to be paid in monthly
installments, the notice shall be sent on the day when
the support payments are thirty days in arrears; or

(B) If the order requires support to be paid in weekly
or bi-weekly installments, the notice shall be sent on the
day when the support payments are twenty-eight days
in arrears.

(2) The number of days support payments are in
arrears shall be considered to be the total cumulative
number of days during which payments required by a
court order have been delinquent, whether or not such
days are consecutive.

(c) When the required payments are in arrears the
requisite number of days in a case, the children's
advocate shall immediately do the following:

(1) If there is an existing support order which has
been entered by a court of competent jurisdiction so that
withholding can occur without the need for any amend-
ment to the support order or for any further action by
a court, the children's advocate shall send the notice
prescribed by the provisions of subsection (d) of this
section; or

(2) If there is no existing support order upon which
withholding can be based, either by its terms or by operation of law, the children's advocate shall commence an action to obtain a support order in accordance with the provisions of section one of this article, so as to establish a support order which provides for withholding.

(d) If notice required by subsection (b) of this section is appropriate, the children's advocate shall determine the time for a meeting between the obligor and the children's advocate and the time for a hearing before the family law master, and shall then set forth in such notice the times and places at which the meeting and hearing will be held if withholding is contested. The meeting and hearing may be scheduled on the same date, but in no case shall the meeting with the advocate be scheduled less than fifteen days after the date the notice is mailed nor shall the hearing before the master be scheduled more than twenty-one days after the date the notice is mailed. The children's advocate shall send such notice by first class mail to the delinquent obligor. The notice shall inform the delinquent obligor of the following:

(1) The amount owed;

(2) That it is proposed that there be withholding from the obligor's income of amounts payable as support, and that if withholding is uncontested, or is contested but determined appropriate, the amount withheld will be equal to the amount required under the terms of the current support order, plus amounts for any outstanding arrearages;

(3) An identification of the type or types of income from which amounts payable as support will be withheld, and a statement of the amounts proposed to be withheld, expressed in meaningful terminology such as dollar amounts or a percentage of disposable earnings, as may be appropriate for the type of income involved;

(4) That the withholding will apply to the obligor's present source of income and to any future source of income;
(5) That any action by the obligor to purposefully minimize his or her income will result in the enforcement of support being based upon potential and not just actual earnings;

(6) That payment of the arrearage after the date of the notice is not a bar to such withholding;

(7) That if the obligor wishes to agree to withholding that he or she should notify the children's advocate, in writing, within fourteen days from the date of the notice in order to cancel a scheduled meeting with the office of the children's advocate and a hearing with the family law master;

(8) That if the obligor fails to respond to the notice or fails to appear at the meeting or hearing after responding to the notice, withholding will automatically occur as described in the notice;

(9) That if the obligor desires to contest the withholding on the grounds that the amount to be withheld is incorrect or that withholding is not proper because of mistakes of fact, he or she must, within fourteen days of the date of the notice, inform the children's advocate in writing of the reasons why the proposed withholding is contested;

(10) That a mistake of fact exists only when there is an error in the amount of current or overdue support claimed in the notice, there is a mistake as to the identity of the obligor, or the amount of the proposed withholding exceeds the amount permitted to be withheld under applicable federal or state law;

(11) That matters such as lack of visitation, inappropriateness of the support award, or changed financial circumstances of the obligee or the obligor will not be considered at any hearing held pursuant to the notice, but may be raised by the filing of a separate petition;

(12) That if the obligor contests the withholding, in writing, a meeting with the children's advocate will be held at a time and place set forth in the notice, for the 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
(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty percent of the obligor's disposable earnings for that week.

(3) If a part of the withholding is for amounts which came due prior to such twelve week period, then:

(A) Where the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty-five percent of the obligor's disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty-five percent of the obligor's disposable earnings for that week.

(4) In addition to the percentage limitations set forth in subdivisions (2) and (3) of this subsection, it shall be a further limitation that in no case shall the total amounts withheld for current payments plus arrearages exceed the amounts withheld for current payments by an amount greater than ten percent of the obligor's disposable income.

(5) The provisions of this subsection shall apply directly to the withholding of disposable earnings of an obligor regardless of whether the obligor is paid on a weekly, biweekly, monthly or other basis.

(6) If an obligor acts so as to purposefully minimize his or her income and to thereby circumvent the provisions of this section which provide for withholding from income of amounts payable as support, the amount to be withheld as support payments may be based upon the obligor's potential earnings rather than his or her actual earnings, and such obligor may not rely upon the percentage limitations set forth in this subsection which limit the amount to be withheld from disposable earnings.

(h) The source of income of any obligor who is subject
to withholding, upon being given notice of withholding, shall withhold from such obligor's income the amount specified by the notice and pay such amount to the child advocate office for distribution in accordance with the provisions of section four, article three of this chapter. The notice given to the source of income shall contain only such information as may be necessary for the source of income to comply with the withholding order. Such notice to the source of income shall include, at a minimum, the following:

(1) The amount to be withheld from the obligor's income, and a statement that the amount to be withheld for support and other purposes, including the fee specified under subdivision (3) of this subsection, may not be in excess of the maximum amounts permitted under section 303(b) of the Federal Consumer Credit Protection Act or limitations imposed under the provisions of this code;

(2) That the source of income must send the amount to be withheld from the obligor's income to the child advocate office within ten days of the date the obligor is paid;

(3) That, in addition to the amount withheld under the provisions of subdivision (1) of this subsection, the source of income may deduct a fee, not to exceed fifty cents, for administrative costs incurred by the source of income, for each withholding;

(4) That withholding is binding on the source of income until further notice by the child advocate office;

(5) That the source of income is subject to a fine for discharging an obligor from employment, refusing to employ, or taking disciplinary action against any obligor because of the withholding;

(6) That if the source of income fails to withhold income in accordance with the provisions of the notice, the source of income is liable for the accumulated amount the source of income should have withheld from the obligor's income;

(7) That the withholding under the provisions of this
section shall have priority over any other legal process under the laws of this state against the same income;

(8) That the source of income may combine withheld amounts from obligors' income in a single payment to the child advocate office and separately identify the portion of the single payment which is attributable to each obligor;

(9) That the source of income must implement withholding no later than the first pay period or first date for payment of income that occurs after fourteen days following the date the notice to the source of income was mailed; and

(10) That the source of income must notify the child advocate office promptly when the obligor terminates his or her employment or otherwise ceases receiving income from the source of income, and must provide the obligor's last known address and the name and address of the obligor's new source of income, if known.

(i) The director shall, by administrative rule, establish procedures for promptly refunding to obligors amounts which have been improperly withheld under the provisions of this section.

(j) A source of income must send the amount to be withheld from the obligor's income to the child advocate office within ten days of the date the obligor is paid.

(k) In addition to any amounts payable as support withheld from the obligor's income, the source of income may deduct a fee, not to exceed fifty cents, for administrative costs incurred by the source of income, for each withholding.

(l) Withholding of amounts payable as support under the provisions of this section is binding on the source of income until further notice by the child advocate office.

(m) Every source of income who receives a notice of withholding under the provisions of this section shall implement withholding no later than the first pay period or first date for the payment of income which occurs after fourteen days following the date the notice
to the source of income was mailed.

(n) A source of income who employs or otherwise pays income to an obligor who is subject to withholding under the provisions of this section must notify the child advocate office promptly when the obligor terminates employment or otherwise ceases receiving income from the source of income, and must provide the office with the obligor's last known address and the name and address of the obligor's new source of income, if known.

(o) A source of income who has more than a single obligor who is subject to withholding from income under the provisions of this article may combine all withheld amounts into a single payment to the child advocate office, with the portion thereof which is attributable to each obligor being separately designated.

(p) A source of income is liable to an obligee, including the state of West Virginia or the department of human services where appropriate, for any amount which the source of income fails to withhold from income due an obligor following receipt by such source of income of proper notice under subsection (h) of this section: Provided, That a source of income shall not be required to vary the normal pay and disbursement cycles in order to comply with the provisions of this section.

(q) Support collection under the provisions of this article shall have priority over any other legal process under state law against the same wages.

(r) Any source of income who discharges from employment, refuses to employ, or takes disciplinary action against any obligor subject to income withholding required by this section because of the existence of such withholding and the obligations or additional obligations which it imposes on the source of income, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars or more than one thousand dollars.

(s) At any time following a period of eighteen months during which the obligor has owed no arrearages to the obligee or to the state of West Virginia or any other
state, if the obligee and obligor agree to the termination
of withholding and demonstrate to the children's
advocate that there is a reliable alternative method by
which to make the support payments, they may request
the children's advocate to terminate withholding and
such withholding from income may cease until such
time as further withholding is required by law. The
director of the child advocate office shall, by legislative
rule, establish state termination standards which will
ensure, at a minimum, that withholding will not be
terminated where there are indications that it is
unlikely that support will continue without such
withholding. The mere fact that all arrearages have
been paid shall not be a sufficient ground for the
termination of withholding.

§48A-5-4. Liens against real and personal property for
overdue support.

An order for support entered by a court of competent
jurisdiction will give rise to a lien imposed against real
and personal property for amounts of overdue support
owed by an obligor who resides or owns property within
this state when the provisions of section seventeen,
article two, chapter forty-eight of this code have been
complied with: Provided, That a foreign order shall first
be registered as a foreign support order with the clerk
in the same manner as such orders are registered in
actions under the revised uniform reciprocal
enforcement of support act, sections thirty-four, thirty-
five, thirty-seven and thirty-eight, article seven of this
chapter: Provided, That a copy of the reciprocal
enforcement of support law of the state in which the
order was made need not be filed with the clerk.

§48A-5-5. Enforcement of support orders by contempt
proceedings; penalties.

(a)(1) In addition to or in lieu of the other remedies
provided by this article for the enforcement of support
orders, the office of the children's advocate may
commence a civil or criminal contempt proceeding in
accordance with the provisions of section twenty-two,
article two, chapter forty-eight of this code against an
obligor who is alleged to have willfully failed or refused to comply with the order of a court of competent jurisdiction requiring the payment of support. Such proceeding shall be instituted by filing with the circuit court a petition for an order to show cause why the obligor should not be held in contempt.

(2) If the court finds that the obligor willfully failed or refused to comply with an order requiring the payment of support, the court shall find the obligor in contempt and may do one or more of the following:

(A) Require additional terms and conditions consistent with the court’s support order.

(B) After notice to both parties and a hearing, if requested by a party, on any proposed modification of the order, modify the order in the same manner and under the same requirements as an order requiring the payment of support may be modified under the provisions of subsection (d), section fifteen, article two, chapter forty-eight of this code. A modification sought by an obligor, if otherwise justified, shall not be denied solely because the obligor is found to be in contempt.

(C) Order that all accrued support and interest thereon be paid under such terms and conditions as the court, in its discretion, may deem proper.

(D) If appropriate under the provisions of section twenty-two, article two, chapter forty-eight of this code:

(i) Commit the contemnor to the county jail; or

(ii) Commit the contemnor to the county jail with the privilege of leaving the jail, during such hours as the court determines and under such supervision as the court considers necessary, for the purpose of allowing the contemnor to go to and return from his or her place of employment.

(3) A commitment under paragraph (D), subdivision (2) of this subsection shall not exceed forty-five days for the first adjudication of contempt or ninety days for any subsequent adjudication of contempt.

(4) An obligor committed under paragraph (D),
subdivision (2) of this subsection shall be released if the court has reasonable cause to believe that the obligor will comply with the court's orders.

(5) If an obligor is committed to jail under the provisions of subparagraph (ii), paragraph (D), subdivision (2) of this subsection and violates the conditions of the court, the court may commit the person to the county jail without the privilege provided under said subparagraph (ii) for the balance of the period of commitment imposed by the court.

(6) If a person is committed to jail under the provisions of subparagraph (ii), paragraph (D), subdivision (2) of this subsection and willfully fails to return to the place of confinement within the time prescribed, such person shall be considered to have escaped from custody and shall be guilty of a misdemeanor, punishable by imprisonment for not more than one year.

§48A-5-6. Posting of bonds or giving security to guarantee payment of overdue support.

(a) An obligor with a pattern of overdue support may be required by order of the master or the court to post bond, give security or some other guarantee to secure payment of overdue support. Said guarantee may include an order requiring that stocks, bonds or other assets of the obligor be held in escrow by the court until the obligor pays the support.

(b) No less than fifteen days before such an order may be entered the children's advocate shall cause the mailing of a notice by first class mail to the obligor informing the obligor of the impending action, his or her right to contest it, and setting forth a date, time and place for a meeting with the children's advocate and the date, time and place of a hearing before the family law master if the impending action is contested.

§48A-5-7. Visitation enforcement; contempt; penalties.

(a) Except as provided in subsection (b) of this section, the children's advocate may do either of the following in a dispute concerning visitation of a minor child:
(1) Apply a visitation adjustment policy established in accordance with the provisions of subsection (c) of this section, or

(2) Commence contempt proceedings under the provisions of this section.

(b) The children's advocate shall not invoke either option under subsection (a) of this section if the parties resolve their dispute through an informal joint meeting with the children's advocate.

(c) Each children's advocate may formulate a visitation adjustment policy which may be implemented by the children's advocate after it is approved by the chief judge of the circuit. Such policy shall be applied to the following visitation violations:

(1) Where a noncustodial parent has been wrongfully denied visitation; or

(2) Where a custodial parent has had his or her right to custody infringed upon by the actions of a noncustodial parent who has abused or exceeded his or her right of visitation.

(d) A visitation adjustment policy formulated and approved under the provisions of this section shall include all of the following:

(1) An adjustment of visitation shall be applied to the same type and duration of visitation as the visitation that was denied by the custodial parent or exceeded by the noncustodial parent, including, but not limited to, weekend visitation for weekend visitation, holiday visitation for holiday visitation, weekday visitation for weekday visitation, and summer visitation for summer visitation.

(2) An adjustment of visitation shall be scheduled to occur within thirteen months after the visitation violation occurred.

(3) The time of the visitation adjustment shall be chosen by the parent whose right of visitation or custody was violated.
(e) If a visitation adjustment policy is formulated and approved under this section, the office of the children's advocate shall keep an accurate record of alleged visitation violations reported to the children's advocate. A parent claiming a visitation violation shall give to the children's advocate a written claim of such alleged visitation violation within seven days after the actions complained of are alleged to have occurred.

(f) If a visitation violation is alleged in a county in which a visitation adjustment policy has been formulated and approved under this section, the following shall apply:

(1) Within five days after receipt of a claim of a visitation violation, the office of the children's advocate shall mail to the parent who is alleged to have committed the violation, a notice by first class mail, directed to such person's last known address. The notice shall inform the parent of the following:

(A) When the visitation violation is alleged to have occurred;

(B) That it is proposed that a visitation adjustment be granted to the complaining parent;

(C) That if the parent alleged to have committed the visitation violation wishes to agree to a visitation adjustment he or she must notify the children's advocate, in writing, within fourteen days from the date of the notice, and must request a meeting with the children's advocate;

(D) That if he or she desires to contest the application of the visitation adjustment policy on the grounds that the claim of a visitation violation is incorrect or that a visitation adjustment is not proper because of mistakes of fact, he or she must, within fourteen days of the date of the notice, inform the children's advocate in writing of the reasons why the proposed adjustment is contested and must request a meeting with the children's advocate.

(2) After a final determination as to whether visitation was wrongfully denied by the custodial parent or the
right of visitation was exceeded or abused by the noncustodial parent, the office of the children’s advocate shall adjust the records of visitation violations accordingly.

(3) The parent found to be entitled to a visitation adjustment shall give to the office of the children’s advocate and the other parent a written notice of the time the visitation adjustment will occur. Such notice shall be given at least ten days before a makeup weekday or weekend visitation or at least thirty days before a makeup holiday or makeup summer visitation.

(g)(1) Except as provided in subsection (b) of this section, the office of the children’s advocate may commence a civil or criminal contempt proceeding in accordance with the provisions of section twenty-two, article two, chapter forty-eight of this code to resolve a dispute concerning visitation of a minor child by filing with the circuit court a petition for an order to show cause why the parent alleged to have committed the visitation violation should not be held in contempt.

(2) If the court finds that the parent committed the visitation violation, the court shall find the parent in contempt and may do one or more of the following:

(A) Require additional terms and conditions consistent with the court’s visitation order.

(B) After notice to both parties and a hearing, if requested by a party, on any proposed modification of visitation, modify the visitation order to meet the best interests of the child. A modification sought by a parent charged with a visitation violation, if otherwise justified, shall not be denied solely because the parent is found to be in contempt.

(C) Order that a visitation adjustment be made.

(D) If appropriate under the provisions of section twenty-two, article two, chapter forty-eight of this code:

(i) Commit the contemnor to the county jail; or

(ii) Commit the contemnor to the county jail with the privilege of leaving the jail, during such hours as the
court determines and under such supervision as the court considers necessary, for the purpose of allowing the contemnor to go to and return from his or her place of employment.

(3) A commitment under paragraph (D), subdivision (2) of this subsection shall not exceed forty-five days for the first adjudication of contempt or ninety days for any subsequent adjudication of contempt.

(4) A parent committed under paragraph (D), subdivision (2) of this subsection shall be released if the court has reasonable cause to believe that the parent will comply with the visitation order.

(5) If a parent is committed to jail under the provisions of subparagraph (ii), paragraph (D), subdivision (2) of this subsection and violates the conditions of the court, the court may commit the person to the county jail without the privilege provided under said subparagraph (ii) for the balance of the period of commitment imposed by the court.

(6) If a person is committed to jail under the provisions of subparagraph (ii), paragraph (D), subdivision (2) of this subsection and willfully fails to return to the place of confinement within the time prescribed, such person shall be considered to have escaped from custody and shall be guilty of a misdemeanor, punishable by imprisonment for not more than one year.


(a) In any case arising under the provisions of this article wherein a notice is served upon a person requiring him or her to notify the children’s advocate if the person is contesting action proposed to be taken against him:

(1) If the person so notified does not submit written reasons for contesting the action within the time set to contest the proposed action, and does not request a meeting with the children’s advocate, then the children’s advocate shall proceed with the proposed action; or

(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
of a child to whom she gave birth, if the complaint
alleges that:

(A) Such married woman lived separate and apart
from her husband for a period of one year or more
immediately preceding the birth of the child;

(B) Such married woman did not cohabit with her
husband at any time during such separation and that
such separation has continued without interruption; and

(C) The defendant, rather than her husband, is the
father of the child.

(3) Any person, including the state of West Virginia
or the department of human services, who is not the
mother of the child, but who has physical or legal
custody of such child;

(4) The guardian or committee of such child;

(5) The next friend of such child when the child is a
minor; or

(6) By such child in his own right at any time after
the child's eighteenth birthday but prior to the child's
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.

(a) Except for an action brought by a child in his or
her own right under the provisions of subdivision (6),
subsection (a), section one of this article, an action for
the establishment of the paternity of a child shall be
brought prior to such child's eighteenth birthday.

(b) An action to establish paternity under the provi-
sions of this article may be brought by or on behalf of
a child notwithstanding the fact that, prior to the
effective date of this section, an action to establish
paternity may have been barred by a prior statute of
limitations set forth in this code or otherwise provided
for by law.

(c) Any other provision of law to the contrary
notwithstanding, when a husband and wife or former
husband and wife, in an action for divorce or an action
to obtain a support order, have litigated the issue of the
paternity of a child conceived during their marriage to
the end that the husband has been adjudged not to be
the father of such child, such prior adjudication of the
issue of paternity between the husband and the wife
shall not preclude the mother of such child from
bringing an action against another person to establish
paternity under the provisions of this article.

§48A-6-3. Medical testing procedures to aid in the
determination of paternity.

(a) The court may, on its own motion, or upon the
motion of any party, order the mother, her child and the
defendant to submit to blood tests or tissue tests to aid
the court in proving or disproving paternity. If such
tests are ordered, the court shall direct that the
inherited characteristics, including, but not limited to,
blood types, be determined by appropriate testing
procedures at a hospital, independent medical institu-
tion or independent medical laboratory, duly licensed
under the laws of this State, or any other state, and shall
appoint an expert qualified as an examiner of genetic
markers to analyze and interpret the results and to
report to the court. The court shall consider the results
as follows:

(1) Blood or tissue test results which exclude the
defendant as the father of the child are admissible and
shall be clear and convincing evidence of nonpaternity
and the court shall, upon considering such evidence,
dismiss the action.

(2) Blood or tissue test results which show a statistical
probability of paternity of more than seventy-five
percent are admissible and shall be weighed along with
other evidence of the defendant's paternity.

(3) If the results of the blood or tissue tests or the
expert's analysis of inherited characteristics is disputed,
the court, upon reasonable request of a party, shall order
that additional tests be made by the same laboratory or
another laboratory at the expense of the party request-
(b) Verified documentation of the chain of custody of the blood or tissue specimens is competent evidence to establish such chain of custody. A verified expert’s report shall be admitted at trial unless a challenge to the testing procedures or a challenge to the results of test analysis has been made before trial. The costs and expenses of making such tests shall be paid by the parties in proportions and at times determined by the court.

§48A-6-4. Establishment of paternity and duty of support.

If the defendant, by verified responsive pleading shall admit that he is the father of the child and owes a duty of support, or if after a trial on the merits, the court or jury shall find, by clear and convincing evidence that the defendant is the father of the child, the court shall order the defendant to provide support in accordance with the provisions of this chapter.

§48A-6-5. Representation of parties.

(a) The children’s advocate of the county where the action under this section is brought shall represent the plaintiff.

(b) The defendant shall be advised of his right to counsel. In the event he files an affidavit that he is a poor person within the meaning of section one, article two, chapter fifty-nine of this code, counsel shall be appointed to represent him. The service and expenses of counsel shall be paid in accordance with the provisions of article twenty-one, chapter twenty-nine of this code:

Provided, That the court shall make a finding of eligibility for appointed counsel in accordance with the requirements of said article and, if the person qualifies, any blood or tissue tests ordered to be taken shall be 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-7-15. 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-7-23. Order of support.
§48A-7-24. Responding court to transmit copies to initiating court.
§48A-7-25. Additional powers of responding court.
§48A-7-26. Adjudication of issue of paternity.
§48A-7-27. Additional duties of responding court.
§48A-7-28. Additional duty of initiating court.
§48A-7-29. Proceedings not to be stayed because of pending or prior action; support order pendente lite.
§48A-7-30. Effect of participation in proceeding.
§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-7-40. 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.
As used in this article unless the context requires otherwise:

(1) "Court" means a circuit court of this state, and, when the context requires, means a court of competent jurisdiction of any other state as defined in a substantially similar reciprocal law.

(2) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree or judgment of any court, of competent jurisdiction, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(3) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this article.

(4) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(5) "Law" includes both common and statutory law.

(6) "Obligee" means, in addition to the meaning ascribed to it in section one, article one of this chapter, a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "Obligor" means, in addition to the meaning ascribed to it in section one, article one of this chapter, any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "Register" means to record in the registry of foreign support orders.

(9) "Registering court" means any court of this state
in which a support order of a rendering state is registered.

(10) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(11) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(12) "State" includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(13) "Support enforcement officer" means the children's advocate in this state or the prosecuting attorney or other public official in another state who has the duty to enforce criminal or civil laws relating to the failure to provide for the support of any person.

(14) "Support order" means any judgment, decree or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation or remission, regardless of the kind of action or proceeding in which it is entered.

§48A-7-3. Remedies cumulative.

1 The remedies herein provided are in addition to and 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, when applicable under section seven, bind the obligor present in this state regardless of the presence or 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
surrender of a person found in that state who is charged
(criminally in this state with failing to provide for the
support of any person; or

(2) Surrender on demand by the governor of another
state a person found in this state who is charged
criminally in that state with failing to provide for the
support of any person. Provisions for extradition of
criminals not inconsistent with this article apply to the
demand even if the person whose surrender is demanded
was not in the demanding state at the time of the
commission of the crime and has not fled therefrom. The
demand, the oath, and any proceedings for extradition
pursuant to this section need not state or show that the
person whose surrender is demanded has fled from
justice or at the time of the commission of the crime was
in the demanding state.

§48A-7-6. Conditions of interstate rendition.

(a) Before making the demand upon the governor of
another state for the surrender of a person charged
criminally in this state with failing to provide for the
support of a person, the governor of this state may
require any children's advocate of this state to satisfy
him that at least sixty days prior thereto the obligee
initiated proceedings for support under this article or
that any proceeding would be of no avail.

(b) If, under a substantially similar reciprocal law, the
governor of another state makes a demand upon the
governor of this state for the surrender of a person
charged criminally in that state with failure to provide
for the support of a person, the governor may require
any children's advocate to investigate the demand and
to report to him whether proceedings for support have
been initiated or would be effective. If it appears to the
governor that a proceeding would be effective but has
not been initiated he may delay honoring the demand
for a reasonable time to permit the initiation of a
proceeding.

(c) If proceedings have been initiated and the person
demanded has prevailed therein the governor may
decline to honor the demand. If the obligee prevailed
and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

§48A-7-7. Law governing duty of support; presumption as to presence of obligor.

Duties of support applicable under this article are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

§48A-7-8. Remedies of state or political subdivision furnishing support.

If a state or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this article as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

§48A-7-9. How duties of support enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this article including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

§48A-7-10. Jurisdiction.

Jurisdiction of any proceeding under this article is vested in courts of record.

§48A-7-11. Contents and filing of petition for support; venue.

(a) The petition or complaint shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition or complaint any information which may help in locating or identifying the obligor
including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints and his social security number.

(b) The petition or complaint may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the petition or complaint on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where another court has already issued a support order in some other proceedings and has retained jurisdiction for its enforcement.

§48A-7-12. Children's advocate to represent obligee.

If this state is acting as an initiating state, the children's advocate shall represent the obligee in any proceedings under this article.

§48A-7-13. Petition for a minor.

A petition or complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.


If the initiating court finds that the petition or complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition or complaint and its certificate and one copy of this article to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state
§48A-7-15. Costs and fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee, but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service or other service supplied to the obligor, be paid in whole or in part by the obligor. When a circuit court in this state is the responding court and has ordered that the obligor make payments to the children's advocate for transmission to the court in an initiating state, the children's advocate shall collect from the obligor, in addition to all other fees and costs, a fee equal to one percent of the payment ordered to be paid by the obligor, which fee shall be treated in the manner of all other fees received by the children's advocate. Costs or fees do not have priority over amounts due to the obligee.

§48A-7-16. Jurisdiction by arrest.

If a circuit court of this state believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

§48A-7-17. State information agency.
(a) The office of the child advocate office is designated as the state information agency under this article. It shall:

(1) Compile a list of the circuit courts and their addresses in this state and transmit it to the state information agency of every other state which has adopted this or a substantially similar law. Upon the adjournment of each session of the Legislature, the child advocate office shall distribute copies of any amendments to this article and a statement of their effective date to all other state information agencies;

(2) Maintain a register of lists of courts received from other states and transmit copies thereof promptly to every circuit court in this state; and

(3) Forward to the circuit court in this state which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other states.

(b) If the child advocate office does not know the location of the obligor or his property in the state, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices, both state and federal, where such offices are able to cooperate, and requests made to the social security administration as permitted by the social security act, as amended.

§48A-7-18. Duty of court and officials of this state as responding state.

(a) After a circuit court of this state, acting as the responding court, receives copies of the petition or complaint, certificate and act from the initiating court of another state, the clerk of the circuit court shall docket the case and notify the children's advocate of such action.
§48A-7-19. Further duties of court and officials in responding state.

(a) The children’s advocate on his or her own initiative shall use all means at his or her disposal to locate the obligor or his or her property, and if because of inaccuracies in the petition or complaint or otherwise the court cannot obtain jurisdiction, the children’s advocate shall inform the court of what has been done and request the court to continue the case pending receipt of more accurate information or an amended petition or complaint from the initiating court.

(b) If the obligor or his or her property is not found in the county, and the children’s advocate discovers that the obligor or his property may be found in another county of this state or in another state, he shall so inform the court. Thereupon, the clerk of the circuit court shall forward the documents received from the court in the initiating state to a circuit court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this article apply to the recipient of the documents so forwarded. If the clerk of a circuit court of this state forwards documents to another court, he or she shall forthwith notify the initiating court.

(c) If the children’s advocate has no information as to the location of the obligor or his or her property, he or she shall so inform the initiating court.

§48A-7-20. Hearing and continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the case, the court may continue the case to another day upon a showing of good cause.
petition or offers evidence constituting a defense, the 
court shall upon request of either party, continue the 
hearing to permit evidence relative to the duty to be 
adduced by either party by deposition or by appearing 
in person before the court. The court may designate the 
judge of the initiating court as a person before whom 
a deposition may be taken.

§48A-7-21. Evidence of husband and wife.

Laws attaching a privilege against the disclosure of 
communications between husband and wife are inappli- 
cable to proceedings under this article. Husband and 
wife are competent witnesses and may be compelled to 
testify to any relevant matter, including marriage and 
parentage.


In any hearing for the civil enforcement of this article, 
the court is governed by the rules of evidence applicable 
in a civil action in a court of record. If the action is 
based on a support order issued by another court of 
competent jurisdiction a certified copy of the order shall 
be received as evidence of the duty of support, subject 
only to any defenses available to an obligor with respect 
to paternity or to a defendant in an action or a 
proceeding to enforce a foreign money judgment. The 
determination or enforcement of a duty of support owed 
to one obligee is unaffected by any interference by 
another obligee with rights of custody or visitation 
granted by a court.

§48A-7-23. Order of support.

If the circuit court, acting as a responding court, finds 
a duty of support, it may order the obligor to furnish 
support or reimbursement therefor and subject the 
property of the obligor to the order. Support orders 
made pursuant to this article shall require that pay- 
ments be made to the child advocate office. The court 
and children's advocate of any county in which the 
obligor is present or has property have the same powers 
and duties to enforce the order as have those of the 
county in which it was first issued. If enforcement is
impossible or cannot be completed in the county in which the order was issued, the children's advocate shall send a certified copy of the order to the children's advocate of any county in which it appears that proceedings to enforce the order would be effective. The children's advocate to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

§48A-7-24. Responding court to transmit copies to initiating court.

The circuit court, acting as a responding court, shall cause a copy of all support orders to be sent to the initiating court.

§48A-7-25. Additional powers of responding court.

In addition to the foregoing powers, a circuit court, acting as responding court, may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the children's advocate; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

§48A-7-26. Adjudication of issue of paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.
§48A-7-27. Additional duties of responding court.

1 A circuit court, acting as a responding court, has the following duties which shall be carried out through the children's advocate:

4 (1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

7 (2) To furnish to the initiating court upon request a 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 receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty 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 stay the proceeding or refuse a hearing under this article because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition or complaint being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

§48A-7-30. Effect of participation in proceeding.

1 Participation in any proceeding under this article does not confer jurisdiction upon any court over any of the
§48A-7-31. Application of article where obligee and obligor are in different counties in this state.

This article applies if both the obligee and the obligor are in this state but in different counties. If the circuit court of the county in which the petition or complaint is filed finds that the petition or complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a circuit court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition or complaint and a certification of the findings to the circuit court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the children's advocate of their receipt. The children's advocate and the circuit court in the county in which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

§48A-7-32. Appeals.

If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(a) Perfect an appeal to the supreme court of appeals if the support order was issued by a circuit court of this state; or

(b) If the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

§48A-7-33. Additional remedies for enforcement of foreign support order.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in sections thirty-four through thirty-eight of this 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-
ren's advocate shall proceed diligently to enforce the order.

§48A-7-38. Effect of registration; enforcement procedure.

(a) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a circuit court of this state. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.


This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact a substantially similar law.

§48A-7-40. Short title.

This article may be cited as the "Revised Uniform
§48A-7-41. Severability.

1 If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article, and to this end the provisions of this 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
§49-2C-2. Interstate adoption assistance compacts authorized; definitions.

(a) The department of human services is authorized to develop, participate in the development of, negotiate and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in sections one through four of this article. When so entered into, and for so long as it shall remain in force, such a compact shall have the force and effect of law.

(b) For the purposes of sections one through four of this article, the term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a Territory or Possession of or administered by the United States.

(c) For the purposes of sections one through four of this article, the term "adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(d) For the purposes of sections one through four of this
§49-2C-3. Interstate adoption assistance compact — Contents of compact.

A compact entered into pursuant to the authority conferred by sections one through four of this article shall have the following content:

1. A provision making it available to joinder by all states.
2. A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal.
3. A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.
4. A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance, and further, that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents, and the state agency providing the adoption assistance.
5. Such other provisions as may be appropriate to implement the proper administration of the compact.

§49-2C-4. Same—Medical assistance.

A child with special needs resident in this state who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this state upon the filing in the department of human services of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the
department of human services the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(b) The department of human services shall consider the holder of a medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(c) The department of human services shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the department of human services for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed therefor. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The department of human services shall make regulations implementing this section. The additional coverages and benefit amounts provided pursuant to this section shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Among other things, such regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

(d) Any person who submits a claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim of statement the maker knows or should know to be false, misleading or fraudulent is guilty of a felony, and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than two years, or both fined and imprisoned.

(e) The provisions of this section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact.
with this state under which the other state provides medical
assistance to children with special needs under adoption
assistance agreements made by this state. All other children
entitled to medical assistance pursuant to adoption
assistance agreements entered into by this state shall be
eligible to receive it in accordance with the laws and
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 service, the appointing authority shall, in addition to any other requirement of law or regulation for the posting of job opening notices, at least ten working days before making an appointment to fill the job opening, post a notice within the building or facility where the duties of the job will be performed and throughout the agency, which notice states that a job opening has occurred and describes the duties to be performed by a person employed in that position.
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.

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

(a) **Claims against the Alcohol Beverage
Control Commissioner:**

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) The Chesapeake and Potomac Tele-
phone Company of West Virginia . . $ 608.11

(2) Tony L. LaNeve.........................$ 112.20

(b) **Claim against the Attorney General:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) F & M Supply Company, Inc. ........ $ 78.47

(c) **Claim against the Board
of Physical Therapy:**

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Louise C. Christensen ..................$ 9,000.00

from Acct. No. 8490-06

(d) **Claims against the Board of
Probation and Parole:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) John A. Bailes .........................$ 52.00

(2) C. Frank LePage........................$ 52.00

(e) **Claims against the Board of Regents:**

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Lucy Kathleen Gardner ...............$ 210.31

from Acct. No. 8633-06

(2) Laura L. Michael .......................$ 60.00

from Acct. No. 9280-00

(f) **Claim against the Department of Agriculture
State Soil Conservation Committee:**

(TO BE PAID FROM GENERAL REVENUE FUND)
### Claims

#### (g) Claim against the Department of Banking:

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>F &amp; M Supply Company, Inc.</td>
<td>$346.28</td>
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#### (h) Claims against the Department of Corrections:

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A &amp; W Sanitation Service</td>
<td>$10.00</td>
</tr>
<tr>
<td>Exxon Company, U.S.A.</td>
<td>$273.88</td>
</tr>
<tr>
<td>FCI Alderson</td>
<td>$7,528.91</td>
</tr>
<tr>
<td>FCI Alderson</td>
<td>$2,585.52</td>
</tr>
<tr>
<td>Firestone Tire &amp; Rubber Co.</td>
<td>$245.84</td>
</tr>
<tr>
<td>Constance Kesner, as Administratrix of the Estate of Philip S. Kesner, deceased</td>
<td>$154,307.84</td>
</tr>
<tr>
<td>Constance Kesner, Individually</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>Roentgen Diagnostics, Inc.</td>
<td>$47.00</td>
</tr>
</tbody>
</table>

#### (i) Claims against the Department of Education:

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charleston Acoustics</td>
<td>$8,257.00</td>
</tr>
<tr>
<td>James T. Kauffman</td>
<td>$155.00</td>
</tr>
<tr>
<td>P.J.S. &amp; Associates</td>
<td>$1,430.00</td>
</tr>
<tr>
<td>Stephanie L. Poole</td>
<td>$434.00</td>
</tr>
<tr>
<td>Richard N. Schnacke</td>
<td>$245.25</td>
</tr>
</tbody>
</table>

#### (j) Claims against the Department of Employment Security:

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>C &amp; P Telephone Co. of W. Va.</td>
<td>$362.90</td>
</tr>
<tr>
<td>Katherine L. Hart</td>
<td>$2,030.00</td>
</tr>
<tr>
<td>Joe L. Smith, Jr., Inc. d/b/a Biggs-Johnston-Withrow</td>
<td>$3,354.44</td>
</tr>
</tbody>
</table>

#### (k) Claim against the Department of Energy:

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(1) Xerox Corporation $ 232.63

(l) Claim against the Department of Finance & Administration:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Avery International Corporation $ 138.00

(m) Claims against the Department of Health:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Sharon Ambrose $ 480.00

(2) Seymore Bailes, d/b/a Weintrob Brothers $ 597.82

(3) Beatrice Dairy Products Division of Beatrice Companies, Inc., d/b/a Meadow Gold Dairy $ 443.24

(4) C & P Telephone Co. of W. Va. $ 16,626.65

(5) Ronald J. Crisp $ 1,000.00

(6) General Telephone Company of SE $ 278.06

(7) Global Equipment Company $ 1,331.98

(8) The Goodyear Tire & Rubber Company $ 210.80

(9) Ray A. Harron $ 923.20

(10) Hellige, Inc. $ 122.93

(11) Harry H. Ko, M. D., d/b/a Calhoun Radiology Association, Inc. $ 624.00

(12) James P. Mylott $ 523.87

(13) Otis Elevator Company $ 4,990.67

(14) Pitney Bowes, Inc. $ 1,952.15

(15) R. J. Carey Company, Inc. $ 2,290.00

(16) Roane County Family Health Care $ 102.00

(17) St. Mary's Hospital $ 84,738.50

(18) Standard Laboratories, Inc. $ 182.00

(19) Telemed Division—Hays Medical, Inc. $ 438.15

(20) Uniforms Manufacturing Company $ 2,360.88

(21) WVU Dental Corporation $ 317.00

(22) Webnic Construction Services Inc. $ 624.70

(n) Claim against the Department of Health—
Office of the Chief Medical Examiner:

(TO BE PAID FROM GENERAL REVENUE FUND)

1. Taylor County Emergency Squad ........ $ 35.00

Claims against the Department of Highways:

(TO BE PAID FROM STATE ROAD FUND)

1. Carl M. Geupel Construction Company, Inc. ................. $221,855.29
2. Jimmie A. Currence and Eula R. Currence ................... $134,027.08
3. Loren Currence and Rella Currence ......................... $12,994.19
4. Carl A. Daniels ........................................ $ 9,450.00
5. Walter J. Davis ........................................ $ 246.75
6. Thelma L. Jamison ....................................... $ 2,500.00
7. Nina G. Jones ........................................... $17,500.00
9. Tommy C. Miller ......................................... $ 216.55
10. Jack McMillan and Vera McMillan ......................... $ 267.00
11. W. B. Swope ........................................... $ 6,211.76
12. O. L. Westfall and Rebecca Westfall .................... $42,500.00
13. Yeager, Incorporated .................................... $136,211.00

(p) Claim against the Department of Human Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

1. F & M Supply Company, Inc. ........................ $ 122.00

(q) Claim against the Department of Labor:

(TO BE PAID FROM GENERAL REVENUE FUND)

1. Firestone Tire & Rubber Co. ......................... $ 40.42

(r) Claim against the Department of Natural Resources:

(TO BE PAID FROM SPECIAL REVENUE FUND)

1. Moore Business Forms, Inc. ....................... $ 2,354.90
    from Acct. No. 8300
(s) Claims against the Department of Public Safety:

(TO BE PAID FROM GENERAL REVENUE FUND)

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Moundsville</td>
<td>$283.48</td>
</tr>
<tr>
<td>Fisher Scientific</td>
<td>$32.98</td>
</tr>
<tr>
<td>Gail Phillips</td>
<td>$918.00</td>
</tr>
<tr>
<td>Sverdrup &amp; Parcel and Associates, Inc.</td>
<td>$7,328.82</td>
</tr>
</tbody>
</table>

(t) Claim against the Department of Veterans Affairs:

(TO BE PAID FROM GENERAL REVENUE FUND)

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire Chief Fire Extinguisher Co.</td>
<td>$22.26</td>
</tr>
</tbody>
</table>

(u) Claims against the Division of Vocational Rehabilitation:

(TO BE PAID FROM FEDERAL FUND)

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>C &amp; O Motors</td>
<td>$217.26</td>
</tr>
<tr>
<td>Conoco, Inc.</td>
<td>$91.20</td>
</tr>
<tr>
<td>Contract Business Interiors</td>
<td>$317.40</td>
</tr>
<tr>
<td>Hewlett Packard Company</td>
<td>$2,670.50</td>
</tr>
<tr>
<td>Huntington Ear Clinic, Inc.</td>
<td>$269.00</td>
</tr>
<tr>
<td>J. W. Allen &amp; Company</td>
<td>$267.35</td>
</tr>
<tr>
<td>Judy's Locksmiths, Inc.</td>
<td>$2,469.15</td>
</tr>
<tr>
<td>Midwest Corporation/Capitol Restaurant Equipment Co.</td>
<td>$5,793.00</td>
</tr>
<tr>
<td>Mountaineer Gas Company</td>
<td>$23.69</td>
</tr>
<tr>
<td>National Audio Company, Inc.</td>
<td>$166.90</td>
</tr>
<tr>
<td>Ohio Valley Office Equipment</td>
<td>$174.08</td>
</tr>
<tr>
<td>Patterson Dental Company</td>
<td>$115.36</td>
</tr>
<tr>
<td>Ricoh Corporation</td>
<td>$416.72</td>
</tr>
<tr>
<td>Clayburn Salisbury and Frank W. Salisbury</td>
<td>$96.00</td>
</tr>
<tr>
<td>Stuart Drug &amp; Surgical Supply</td>
<td>$48.95</td>
</tr>
</tbody>
</table>

(v) Claim against the Health Care Cost Review Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohio Valley Office Equipment</td>
<td>$174.08</td>
</tr>
<tr>
<td>Patterson Dental Company</td>
<td>$115.36</td>
</tr>
<tr>
<td>Ricoh Corporation</td>
<td>$416.72</td>
</tr>
<tr>
<td>Clayburn Salisbury and Frank W. Salisbury</td>
<td>$96.00</td>
</tr>
<tr>
<td>Stuart Drug &amp; Surgical Supply</td>
<td>$48.95</td>
</tr>
</tbody>
</table>
198  (1) Manpower Temporary Services .......$
     from Acct. No. 8564  227.80
200  
201  (w) Claim against the Human Rights Commission:
     (TO BE PAID FROM GENERAL REVENUE FUND)
203  (1) Matthew Bender & Company .........$
     134.50
204  
205  (x) Claim against the Library Commission:
     (TO BE PAID FROM GENERAL REVENUE FUND)
207  (1) C & P Telephone Co. of W. Va. .......$
     959.90
208  
209  (y) Claims against the Public Employees
     Insurance Board:
     (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) Claim against the Railroad
     Maintenance Authority:
     (TO BE PAID FROM GENERAL REVENUE FUND)
218  (1) Karl D. Myers .......................$
     62.56
219  
220  (aa) Claim against the State Commission
     on Aging:
     (TO BE PAID FROM GENERAL REVENUE FUND)
223  (1) Moore Business Forms &
     Systems Division .................$
     874.10
224  
226  (bb) Claims against the Supreme Court of Appeals:
     (TO BE PAID FROM GENERAL REVENUE FUND)
228  (1) BJW Printers.........................$
     205.00
229  (2) Kanawha County Commission .........$
     1,022.76
230  
231  (cc) Claim against the Tax Department:
     (TO BE PAID FROM GENERAL REVENUE FUND)
(1) C & P Telephone Co. of W. Va. .......$ 3,305.43

(dd) Claims against the Treasurer:

(TO BE PAID FROM TREASURER'S ACCOUNT NO. 1600,
FROM APPROPRIATION FOR CURRENT FISCAL YEAR 1985-86)

(1) A & I Company .........................$ 15,106.00
(2) Ostrin Electric Company ...............$ 1,305.81

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

CHAPTER 46

(H. B. 1961—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 board of regents, the secretary of state and the tax department to be moral obligations of the state and directing payment thereof.

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

(a) Claim against the Board of Regents:

(TO BE PAID FROM GENERAL REVENUE)

(1) Mountaineer Gas Co. ................. $ 126.68

(b) Claims against the Secretary of State:

(TO BE PAID FROM GENERAL REVENUE)

(1) C & P Telephone Co. of W. Va. ....... $ 12,012.66
(2) The S. Spencer Moore Company ....... $ 222.64

(c) Claim against the Tax Department:

(TO BE PAID FROM GENERAL REVENUE)

(1) B-K Dynamics, Inc. .................... $237,235.77
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.

The Legislature has duly considered the findings of fact and recommendations for awards reported to it by the court of claims in respect to the following named claimants who were innocent victims of crime within this state and entitled to compensation; and in respect to each of such named claimants the Legislature adopts those findings of fact as its own, hereby declares it to be the moral obligation of the state to pay each such claimant in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

Claims for crime victims compensation awards:

(TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Allen, Anna M.</td>
<td>$1,250.00</td>
</tr>
<tr>
<td>2</td>
<td>Allen, Anna M., guardian of Harold William Mullins</td>
<td>$18,750.00</td>
</tr>
<tr>
<td>3</td>
<td>Arbuckle, Ramona S.</td>
<td>$668.85</td>
</tr>
<tr>
<td>4</td>
<td>Bailey, Janice M.</td>
<td>$307.80</td>
</tr>
<tr>
<td>5</td>
<td>Blankenship, David</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Blankenship, Loretta M</td>
<td>$3,006.46</td>
</tr>
<tr>
<td>7</td>
<td>Boothe, Beulah G.</td>
<td>$330.00</td>
</tr>
<tr>
<td>8</td>
<td>Brown, Hazel W.</td>
<td>$6,448.09</td>
</tr>
<tr>
<td>9</td>
<td>Cantrell, Allen D.</td>
<td>$157.06</td>
</tr>
<tr>
<td>No.</td>
<td>Claimant</td>
<td>Amount</td>
</tr>
<tr>
<td>-----</td>
<td>---------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>24</td>
<td>Carver, Freddy K., Sr.</td>
<td>$2,034.50</td>
</tr>
<tr>
<td>25</td>
<td>Coduto, Linda M.</td>
<td>$535.11</td>
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<tr>
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<td>Coleman, Verlan K.</td>
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<tr>
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<td>Compton, Sheree J.</td>
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<td>28</td>
<td>Cox, Debbie J.</td>
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<td>29</td>
<td>Crites, Larry W.</td>
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<td>Cunningham, David W.</td>
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<tr>
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<td>Dolan, Patricia Ann</td>
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<td>32</td>
<td>Erdman, Elizabeth A.</td>
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<tr>
<td>33</td>
<td>Farley, Anna G.</td>
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<td>34</td>
<td>Forster, Kevin L.</td>
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<tr>
<td>35</td>
<td>Foster, Glendeen R.</td>
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<tr>
<td>36</td>
<td>Gardner, Anita G.</td>
<td>$455.90</td>
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<tr>
<td>37</td>
<td>Glover, Sheila R.</td>
<td>$5,269.49</td>
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<tr>
<td>38</td>
<td>Griffith, Thomas L.</td>
<td>$7,237.90</td>
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<tr>
<td>39</td>
<td>Grove, David M.</td>
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Trust Officer, The McDowell County National Bank, Guardian of the Estate of Kimberly Bolen, a minor $6,666.66

(81) Stone, Gary K. $434.50
(82) Taylor, Roy F., Jr. $250.00
(83) Walker, Bobby S. $10,636.67
(84) Watson, James L. $772.67
(85) Withrow, Wendell B., II $3,378.15
(86) Workman, Brenda S. $4,506.75

TOTAL $529,478.25

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants herein; provided that any claimant herein who, subsequent to the payment of an award, receives or recovers benefits or advantages for the economic loss not prior considered by the court of claims in the course of and in reduction of the award of compensation, shall inform the court of claims and crime victims compensation fund of such recovery for determination of the amounts thereof and requirement for the deposit thereof in the crime victims 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.

(a) The department of commerce shall have the authority and duty to:

(1) Promote, encourage and facilitate the expansion and development of markets for West Virginia products and services and the state's national and international image and prestige by any and all reasonable methods;

(2) Promote and encourage the location and development of new business in the state and the maintenance and expansion of existing business;

(3) Investigate and study conditions affecting West Virginia business, industry and commerce; collect and disseminate information, and engage in technical studies, scientific investigations, statistical research and educational activities necessary or useful for the proper execution of the powers and duties of the department;

(4) Plan and develop an effective economic information service that will directly assist business, education and labor and also encourage businesses outside the state to use industrial office facilities, professional, labor, financial and recreational facilities, services and products from within the state;

(5) Encourage and develop commerce with other states and nations and devise methods of removing trade barriers that hamper the free flow of commerce between this and other states and nations and for these purposes cooperate with governmental, quasi-public and private organizations in formulating and promoting the adoption of compacts and agreements helpful to commerce and labor;

(6) Conduct or encourage research designed to further new and more extensive uses of the natural, human, professional, technical and other resources of the state with a view to the development of new products, industrial processes, services and markets;

(7) Compile periodically a census of business and industry in the state, in cooperation with other agencies, and analyze and publish the information in such form as to be most valuable to business and industry;
(8) Compile periodically a census of the crafts, trades, skills and occupations of all adult persons in the state, in cooperation with other agencies, and analyze and publish the information in such form as to be most valuable to business and industry;

(9) Study long-range trends and developments in the industries, commerce and economic health of the state, and analyze the reasons underlying such trends; study costs and other factors affecting successful operation and location of businesses within the state;

(10) Advertise and publicize the material, economic quality of life, recreational and other advantages of the state which render it a desirable place for commerce and residence;

(11) Collect, compile and distribute information and literature concerning the advantages and attractions of the state, its historic and scenic points of interest and the highway, transportation and other facilities of the state;

(12) Plan and carry out a program of information and publicity designed to attract to West Virginia tourists, visitors and other interested persons from outside the state;

(13) Initiate, promote and conduct, or cause to be conducted, research designed to further new and more extensive uses and consumption of natural and other resources and their by-products; and for such purposes, to enter into contracts and agreements with research laboratories maintained by educational or endowed institutions in this state;

(14) Manage the state's park and recreation system for the benefit of the people of this state, and effectively promote and advertise the same to increase public knowledge and use thereof;

(15) To acquire for the state in the name of the department of commerce by purchase, lease or agreement, or accept or reject for the state, in the name of the department of commerce, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, in-
eluding lands and water, for state park or recreational areas for the purpose of providing public recreation:

*Provided,* That any sale, exchange or transfer of such property shall be subject to the procedures of article one, chapter twenty of this code; *Provided, however,* That no lands or waters which, on or before December thirty-first, one thousand nine hundred eighty-five, were part of the state’s system of parks, or which were held or used for recreational purposes, shall be subject to such sale, exchange or transfer, by the department of commerce. *Provided further,* That nothing herein contained shall be construed to prevent the department of commerce from selling, transferring or conveying to any other department or agency of this state any lands or waters to which it has title and which was sold, conveyed or transferred to the department of commerce from the department or agency to which it is being sold, conveyed or transferred.

(16) Make recommendations to the governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties, and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the department and the effective discharge of the duties of the department; and

(17) To cooperate and assist in the production of motion 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, chapter 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 improve tourist facilities and attractions;
3 (b) To compile a listing of all tourist facilities in this state, whether public or private, including, but not limited to, state parks and forests, camping grounds, backpacking and hiking trails, public and private hunting areas (including the game or fowl indigenous thereto), fishing lakes, ponds, rivers and streams (including the type of fish indigenous thereto; and the dates of the stocking thereof), ski resorts and areas, ice skating rinks or facilities, rifle and pistol target practice areas, skeet and other shooting facilities, archery ranges, swimming pools, lakes, ponds, rivers and streams, hotels, motels, resorts and lodges (including any attendant restaurant, banquet, meeting or convention facilities or services), health spas or mineral water or spring water health facilities, museums, cultural centers, live performance theaters, colleges, schools, universities, technical centers, airports, railroad stations, bus stations, river docks, boating areas, government or military installations (which are not restricted to public access), historical places, markers or places of events, birthplaces of famous West Virginians, or any other thing of like kind and nature, and to develop relative thereto a series of films, videotapes, pamphlets, brochures and other advertising or promotional media, and to distribute the same in such a manner as to enhance the public's knowledge about West Virginia and its many attractions;
3 (c) Develop a plan for tourist facility expansion and new development, including financing;
3 (d) To develop a system, means and mechanism to distribute the promotional media described in subdivision (b) of this section, both nationally and internationally;
and to make the same available to travel agents, tour
groups, senior citizen organizations, airlines, railroads,
business companies, newspapers, magazines, radio and television stations, and the travel editors thereof; to develop, in
cooperation with the department of highways, a series of
information stations along interstate and other major highways of this state, utilizing existing rest stop areas
and other areas at or near the main points of egress and
ingress of this state for the purpose of making said information available to the public at large;

(e) To develop and implement a marketing strategy,
employing radio, television, magazine and newspaper advertising, or any combination thereof, in those major metropolitan areas of the nation, in order to attract the residents thereof to visit and enjoy the tourist facilities of this state;

(f) To encourage, cooperate with and participate in,
any group or organization, including regional travel councils, the purpose of which is to promote and advertise,
or encourage the use of, tourist facilities in West Virginia;

(g) To provide professional assistance, technical advice
or marketing strategies to any privately owned facility or attraction, as described in subdivision (b) of this section, which is open and available to the general public, which has developed or is attempting to develop its own advertising program;

(h) To employ, train and supervise a corps of information specialists or tour guides in state parks and facilities only who possess, or through their employment and training will possess, specific knowledge and information about the historic, scenic, cultural, industrial, educational, governmental, recreational and geographical significance of the state and the various facilities or attractions described in subdivision (b) of this section. In hiring the information specialists herein provided, special preference shall be given to senior citizens (those over sixty-two years of age) and college students who are bona fide residents of the state and enrolled in any college or university of this state, whether public or private, all of whom shall
be hired on a part-time basis and whose periods of employment may be seasonable;

(i) To assist tour groups, travel agencies, public carriers or other entities of like kind or nature in developing a program of preplanned tours, visits or vacations in West Virginia; and, in conjunction therewith, to coordinate the activities of said tour groups, travel agencies, public carriers or other entities with the services offered by any of the facilities set forth in subdivision (b) of this section; and to encourage said facilities to offer special or discount rates to any party traveling with said tour groups, travel agencies, public carriers or other entities of like kind or nature; and

(j) To cooperate with the department of highways, in developing a system of informational highway signing relating to the recreational, scenic, historic and transportation facilities and attractions of the state that comply with the current federal and state regulations as related to outdoor advertising and signing as required by the 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-
Article 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.


1. In addition to definitions appearing in subsequent articles, in this chapter:
   1. (1) "Actuarial method" means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.
   2. (2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. A "consumer credit agreement" is an agreement where credit is granted.
   3. (3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.
   4. (4) "Amount financed" means the total of the following items to the extent that payment is deferred:
      (a) The cash price of the goods, services or interest in land, less the amount of any down payment whether made in cash or in property traded in;
      (b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a
(c) If not included in the cash price:

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

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

(iii) Additional charges permitted by this chapter.

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

(6) The "cash price" of goods, services or an interest in land means the price at which the goods, services or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (a) applicable sales, use, privilege, and excise and documentary stamp taxes, (b) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations and improvements, and (c) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

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

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

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

(c) Escrows for future payments of taxes and insurance;

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

(e) Appraisal fees; and

(f) Credit reports.

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

(9) "Commissioner" means the commissioner of banking of West Virginia.

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

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

(12) (a) Except as provided in paragraph (b), "consumer
credit sale" is a sale of goods, services or an interest in land
in which:

(i) Credit is granted either by a seller who regularly
pursuant to a seller credit card;

(ii) The buyer is a person other than an organization;

(iii) The goods, services or interest in land are purchased
primarily for a personal, family, household or agricultural
purpose;

(iv) Either the debt is payable in installments or a sales
finance charge is made; and

(v) With respect to a sale of goods or services, the
amount financed does not exceed twenty-five thousand
dollars.

(b) "Consumer credit sale" does not include a sale in
which the seller allows the buyer to purchase goods or
services pursuant to a lender credit card or similar
arrangement.

(13) (a) "Consumer lease" means a lease of goods:

(i) Which a lessor regularly engaged in the business of
leasing makes to a person, other than an organization, who
takes under the lease primarily for a personal, family,
household or agricultural purpose;

(ii) In which the amount payable under the lease does
not exceed twenty-five thousand dollars; and

(iii) Which is for a term exceeding four months.

(b) "Consumer lease" does not include a lease made
pursuant to a lender credit card or similar arrangement.

(14) "Consumer loan" is a loan made by a person
regularly engaged in the business of making loans in which:

(a) The debtor is a person other than an organization;

(b) The debt is incurred primarily for a personal, family,
household or agricultural purpose;

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

(d) Either the principal does not exceed twenty-five
thousand dollars or the debt is secured by an interest in
land.
119 (15) “Cosigner” means a natural person who assumes liability for the obligation on a consumer credit sale or consumer loan without receiving goods, services or money in return for the obligation or, in the case of a revolving charge account or revolving loan account of a consumer, without receiving the contractual right to obtain extensions of credit under the account. The term cosigner includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition for forbearance on collection of a consumer’s obligation that is in default. The term cosigner does not include a spouse whose signature is required to perfect a security interest. A person who meets the definition in this paragraph is a “cosigner,” whether or not the person is designated as such on the credit obligation.

134 (16) “Credit” means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

137 (17) “Earnings” means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

143 (18) “Federal Consumer Credit Protection Act” means the “Consumer Credit Protection Act” (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act.

147 (19) “Goods” includes goods not in existence at the time the transaction is entered into and gift and merchandise certificates, but excludes money, chattel paper, documents of title and instruments.

151 (20) “Home solicitation sale” means a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller’s business establishment at a fixed location and the buyer’s agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open-end credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller’s business establishment at a fixed location, a sale of motor
vehicles, mobile homes or farm equipment or a sale which may be rescinded under the Federal Truth in Lending Act (being Title I of the Federal Consumer Credit Protection Act). A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for in whole or in part by a consumer loan in which the creditor is subject to claims and defenses arising from the sale.

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

(22) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

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

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

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

(23) "Loan" includes:

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

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

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

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

(24) "Loan finance charge" means the sum of (i) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: Interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the
consumer's default or other credit loss; and (ii) charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges.

(b) If a lender makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

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

(26) "Official fees" means:

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

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

(27) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(28) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a sales finance charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no sales finance charge is made, or (c)
two or more periodic payments with respect to a debt
arising from a consumer loan. If any periodic payment other
than the down payment under an agreement requiring or
permitting two or more periodic payments is more than
twice the amount of any other periodic payment, excluding
the down payment, the consumer credit sale or consumer
loan is "payable in installments."

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

(30) "Person related to" with respect to an individual
means (a) the spouse of the individual, (b) a brother,
brother-in-law, sister or sister-in-law of the individual, (c)
an ancestor or lineal descendant of the individual or his
spouse, and (d) any other relative, by blood or marriage, of
the individual or his spouse who shares the same home with
the individual. "Person related to" with respect to an
organization means (a) a person directly or indirectly
controlling, controlled by or under common control with
the organization, (b) an officer or director of the
organization or a person performing similar functions with
respect to the organization or to a person related to the
organization, (c) the spouse of a person related to the
organization, and (d) a relative by blood or marriage of a
person related to the organization who shares the same
home with him.

(31) "Precomputed loan." A loan, refinancing or
consolidation is "precomputed" if the debt is expressed as a
sum comprising the principal and the amount of the loan
finance charge computed in advance.

(32) "Precomputed sale." A sale, refinancing or
consolidation is "precomputed" if the debt is expressed as a
sum comprising the amount financed and the amount of the
sales finance charge computed in advance.

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

(34) "Principal" of a loan means the total of:
(a) The net amount paid to, receivable by or paid or
payable for the account of the debtor;
(b) The amount of any discount excluded from the loan
finance charge; and
(c) To the extent that payment is deferred:
(i) Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) Additional charges permitted by this chapter.

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

(36) "Revolving loan account" means an arrangement between a lender and a consumer including, but not limited to, a lender credit card or similar arrangement, pursuant to which (a) the lender may permit the consumer to obtain loans from time to time, (b) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (c) a loan finance charge if made is not precomputed but is computed periodically on the outstanding unpaid balances of the principal of the consumer's account from time to time, and (d) there is the privilege of paying the balances in installments.

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

(38) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

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

(40) "Sales finance charge" means the sum of (a) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or issuer of a seller credit card as an incident to the extension of credit,
including any of the following types of charges which are applicable: Time-price differential, however denominated, including service, carrying or other charge, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss, and (b) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable; unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

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

(42) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, that person and any other person or persons, a person related to that person, or others licensed or franchised or permitted to do business under his business name or trade name or designation or on his behalf.

(43) "Services" includes (a) work, labor and other personal services, (b) privileges with respect to transportation, use of vehicles, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

(44) "Supervised financial organization" means a person, other than a supervised lender or an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered or holding an authorization certificate under the laws of this state or of the United
States which authorizes the person to make consumer loans; and
(b) Subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

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

(46) "Supervised loan" means a consumer loan made by other than a supervised financial organization, including a loan made pursuant to a revolving loan account, where the principal does not exceed two thousand dollars, and in which the rate of the loan finance charge exceeds eight percent per year as determined according to the actuarial method.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-104. Notice to cosigners.

No person shall be held liable as cosigner, or be charged with personal liability for payment in a consumer credit sale or consumer loan unless that person, in addition to and before signing any instrument evidencing the transaction, signs and receives a separate notice which clearly explains his liability in the event of default by the consumer and also receives a copy of the disclosure required by the "Federal Consumer Credit Protection Act." Such notice shall be sufficient if it appears under the conspicuous caption "NOTICE TO COSIGNER" and contains substantially the following language:

"You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility."

"You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount."

"The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record."
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.

1 (a) The controlled substances listed in this section are included in Schedule I.
2 (b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:
3 (1) Acetylmethadol;
4 (2) Allylprodine;
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) Dimethyldiethylthiambutene;
27  (19) Dimethylthiambutene;
28  (20) Dioxaphethylbutyrate;
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) Levomoramid;
38  (30) Levophenacylmorphan;
39  (31) Morpherdine;
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;
Tilidine;
Trimeperidine.
(c) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except HCl Salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Phoclodine;
(23) Thebacon.

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

(1) 2,5-dimethoxyamphetamine; also known by these trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;
(2) 3,4-methylenedioxy amphetamine;
(3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-DMA;
(4) 5-methylamino-3, 4-methylenedioxy amphetamine;
(5) 4-methoxyamphetamine; also known by these trade names: 4-methoxy-amethylphenethylamine; paramethoxyamphetamine; PMA;
(6) 3,4,5-trimethoxyamphetamine;
(7) Bufotenine; known also by these trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; N,N(dimethylserotonin; 5-hydroxy-N-dimethyltryptamine; mappine;
(8) Diethyltryptamine; known also by these trade and other names: N-N-Diethyltryptamine; "DET";
(9) Dimethyltryptamine; known also by the name "DMT";
(10) 4-methyl-2,5-dimethoxy amphetamine; known also by these trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; "STP";
(11) Ibogaine; known also by these trade and other names: 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1', 2': 1, 2 azepino 4,5b) indole; tabernanthe iboga;
(12) Lysergic acid diethylamide;
(13) Marihuana;
(14) Mescaline;
(15) Peyote; meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lematre, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or extracts;
(16) N-ethyl-3-piperidyl benzilate;
(17) N-methyl-3-piperidyl benzilate;
(18) Psilocybin;
(19) Psilocyn;
(20) Tetrahydrocannabinols; including synthetic equivalents of the substances contained in the plant or in the resinous extractives of Cannabis or synthetic substances, derivatives and their isomers with similar
chemical structure and pharmacological activity such as the following:

- Delta 1
- Delta 6
- Delta 3, 4
- Cis or trans tetrahydrocannabinol, and their optical isomers;
- Thiophene analog of phencyclidine; also known by these trade or other names: (A) (1-(2-thienyl) cyclohexyl) piperidine; (B) Thiienyl analog of phencyclidine; TPCP;
- Ethylamine analog of phencyclidine... Some trade or other names: N-ethy1-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;
- Pyrrolidine analog of phencyclidine... Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
- N-ethylamphetamine;
- Parahexyl.

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

  - Mecloqualone.
  - Methaqualone.

- Any material, compound, mixture or preparation which contains any quantity of the following substances:

  - Acetyl-alpha-methylfentanyl;
  - Alpha-methylthiofentanyl;
  - Benzylfentanyl;
  - Beta-hydroxyfentanyl;
  - Beta-hydroxy-3-methylfentanyl;
  - 3-Methylthiofentanyl;
  - Thenylfentanyl;
  - Thiofentanyl;
  - 1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts and salts of isomers;
§60A-2-206. Schedule II.

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

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

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

(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid extracts;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Ethylmorphine;
(I) Ethorphine HCL;
(J) Hydrocodone;
(K) Hydromorphone;
(L) Metopon;
(M) Morphine;
(N) Oxycodone;
(O) Oxymorphone;
(P) Thebaine;

(2) Any salt, compound, isomer derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;
(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or eecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

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

(1) Alphaprodine;
(2) Anileridine;
(3) Bezitramide;
(4) Dextrorphan - excepted;
(5) Dihydrocodeine;
(6) Diphenoxylate;
(7) Fentanyl;
(8) Isomethadone;
(9) Levopropoxyphene - excepted;
(10) Levomethorphan;
(11) Levorphanol;
(12) Metazocine;
(13) Methadone;
(14) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(15) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
(16) Pethidine; (meperidine);
(17) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(18) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-ethyl-4-phenylpiperidine-4-carboxylate;
(19) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(20) Phenazocine;
(21) Piminodine;
(22) Racemethorphan;
(23) Racemorphan;
(24) Bulk Dextropropoxyphene (nondosage forms);
(25) Sufentanil.

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

1. Methamphetamine, including its salts, isomers and salts of isomers;
2. Amphetamine, its salts, optical isomers and salts of its optical isomers;
3. Phenmetrazine and its salts;

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

1. Amobarbital;
2. Secobarbital;
3. Pentobarbital;
4. Phencyclidine.

(f) Hallucinogenic substances:

1. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product.

(Some other names for dronabinol: (6aRtrans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo 9b,d) pyran-1-ol or (-) delta-9-(trans)-tetrahydrocannabidiol).

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

1. Immediate precursor to amphetamine and methamphetamine:
   A. Phenylacetone;
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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) Barbital;
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) Methyphenobarbital, 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,
including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible:

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

(1) Fenfluramine.

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

(1) Diethylpropion;

(2) Mazindol;

(3) Phentermine;

(4) Pemoline (including organometallic complexes and chelates thereof);

(5) Pipradrol;

(6) SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Dextropropoxyphene (alpha - (+) - 4 - dimethylamino-1, 2-diphenylethane).

(f) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Amyl nitrite, butyl nitrite, isobutyl nitrite and the other organic nitrates are controlled substances and no product containing these compounds as a significant component shall be possessed, bought or sold other than pursuant to a bona fide prescription, or for industrial or manufacturing 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 days after the first session held after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner, and cause to be published a statement revealing (a) the receipts and expenditures of the county during the previous fiscal year arranged under descriptive headings, (b) the name of each firm, corporation, and person who received more than fifty dollars from any fund during the previous fiscal year, together with the amount received and the purpose for which paid, and (c) all debts of the county, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid. Such statement shall be published as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

The county commission shall transmit to any resident of the county requesting the same a copy of the published statement for the fiscal year designated, supplemented by a list of the names of each firm, corporation, and person who received less than fifty dollars from any fund during such fiscal year showing the amount paid to each and the purpose for which paid.

If a county commission willfully fail or refuse to perform the duties hereinbefore named, every member of such commission, concurring in such failure or
refusal, shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than fifty nor
more than one hundred dollars; and the prosecuting
attorney of any such county shall, when such failure or
refusal shall come to his knowledge, immediately
present the evidence thereof to the grand jury if in
session, and if not in session, he shall institute proper
criminal proceedings before a justice against any such
offender, and cause such failure or refusal to be
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.**

The administration and management of any county public hospital, clinic, long-term care facility or other related facility acquired, equipped, furnished, improved or extended under section fourteen of this article shall be vested in a board of trustees, consisting of not less than five members appointed by the county commission. Prior to the issuance of any bonds under the provisions of section fourteen of this article, the county commission shall appoint two of such trustees for a term of two years, two trustees for a term of four years, and one trustee for a term of six years from the first day of the month during which appointed. Upon the expiration of such initial appointments, the term of each new appointee shall be six years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Any trustee shall be eligible for reappointment upon the expiration of his term. The trustees shall receive no compensation for their services, but shall be reimbursed for any expenses incurred in the performance of their duties. Any trustee may be removed by the county commission for incompetency, neglect of duty or malfeasance in office after an opportunity to be heard at a public hearing before the county commission. At the first meeting of the board of trustees, and annually thereafter, it shall organize by designating one of its members as chairman and by appointing a secretary and a treasurer who may, but need not be, trustees: Provided, That the board of trustees shall designate a treasurer at its first regular meeting subsequent to the effective date of this section.

Such board of trustees shall provide for the employment of and shall fix the compensation for and remove at pleasure all professional, technical and other employees, skilled or unskilled, as it may deem necessary for the operation and maintenance of the hospital, clinic, long-term care facility or other related facility; and disbursement of funds in such operation and mainte-
The sheriff of each county shall remit to the board of trustees of any county hospital all moneys in his possession held on behalf of such county hospital, whether or not deposited in a bank or depository unless the sheriff has been designated treasurer of the county hospital as provided in this section. Such transfer of funds shall be made as of the balances on hand on the thirtieth day of June of the year in which the board of trustees of such county hospital appoints a treasurer other than the sheriff, and shall be completed no later than the first day of August of that year. Such transfer shall be adjudged complete and final upon the approval of the sheriff's official settlement for the fiscal year ending on the thirtieth day of June of the year in which the board of trustees of such county hospital appoints a treasurer other than the sheriff, and, any minor adjustment made necessary by the actually known figures shall also be made at that time. All balances in all county hospital funds at the end of each month after the thirtieth day of June of the year in which the board of trustees of county hospitals appoints a treasurer other than the sheriff shall be transferred by the sheriff to the board of trustees of such county hospital not later than the tenth day of the following month.

The treasurer for the board shall be the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the hospital board or the county sheriff. Upon appointment this person shall be titled and referred to as treasurer of the county hospital. For the faithful performance of this duty, he shall execute a bond, to be approved by the board of trustees of such county hospital, in the penalty to be fixed by such board, not to exceed the amount of
funds which it is estimated he will handle within any period of two months. The premium on such bond shall be paid by the county hospital.

The board of trustees of such county hospital may open a bank account, or accounts, as required to adequately and properly transact the business of the district in a depository, or banks, within the county. Such depositories, or banks, shall provide bond to cover the maximum amount to be deposited at any one time. On and after the first day of July, one thousand nine hundred eighty-six, all levies and any other moneys received by the sheriff and paid to the treasurer of such county hospital shall be deposited in these accounts and all proper payments from such funds shall be made by the designated depository or bank upon order or draft presented for payment and signed by the duly authorized signatories of the board of trustees: Provided, That in determining the depository for county hospital funds a board member who has a pecuniary interest in a bank within the county shall not participate in the determination of the depository for such funds.

If it be deemed that sufficient funds are on hand in any account at any one time which may be more than are normally required for the payment of incurred expenses, such funds in the amount so deemed available may be invested by the treasurer of the county board with the state sinking fund commission, or in guaranteed certificates of deposit issued by the depository or bank, or other guaranteed investments such as treasury bills, treasury notes or certificates of deposit issued by either the United States government or a banking institution in which federal or state guarantees are applicable. Interest earned in such investments is to be credited to the fund from which the moneys were originally available.

For the purposes of this section “county hospital” means any county public hospital, clinic, long-term care facility or other related facility acquired, equipped, furnished, improved or extended under section fourteen 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.

(a) Where any adult or juvenile is lawfully detained in custody or as an inmate or prisoner in any jail or prison or as a resident of any juvenile facility or juvenile detention center, if any other person shall convey anything into the jail, prison, facility or detention center or other place of custody of such adult or juvenile with
the intent to aid or facilitate such adult's or juvenile's escape or attempted escape therefrom, or if such other person shall forcibly rescue or attempt to rescue such adult or juvenile therefrom, such other person is guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.

(b) Where any adult or juvenile is lawfully detained in custody or as an inmate or prisoner in any jail or prison or as a resident of any juvenile facility or juvenile detention center, if any other person shall convey alcoholic liquors or nonintoxicating beer, any money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, drug, poison, explosive, utensil or instrument of any kind to such adult or juvenile without the express authority and permission of the jailer, warden, or other supervising officer and with knowledge that such adult or juvenile is so lawfully detained, such other person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and imprisoned in the county jail not less than three nor more than twelve months: Provided, That if any person transports a firearm or other dangerous or deadly weapon onto the grounds of any jail or prison, or juvenile facility or detention center within this state and is unauthorized by law to do so, such person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years.

(c) Whoever purchases, accepts as a gift, or secures by barter, trade or in any other manner, any article or articles manufactured at or belonging to any jail, prison, juvenile facility or juvenile detention center from any inmate prisoner or resident detained therein is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and imprisoned in the county jail not less than three nor more than twelve months.

(d) Whoever persuades, induces or entices or attempts to persuade, induce or entice, any person who is an
inmate or prisoner in any jail or prison or resident of
any juvenile facility or juvenile detention center to
escape therefrom or to engage or aid in any insubordi-
tation to the authority of such jail, prison, juvenile
facility or juvenile detention center is guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than fifty dollars nor more than five
hundred dollars and imprisoned in the county jail not
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 monitor-
ing 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
to intercept or monitor, or to attempt to intercept or
monitor, the transmission of a message, signal or other
communication by telephone between an employee or
similar agent of such person, firm or corporation and
a customer of such person, firm or corporation unless
such person, firm or corporation does all of the
(1) Notifies each employee or agent subject to interception or monitoring that their telephone messages are subject to interception or monitoring.

(2) Provides telephone instruments for employee’s personal use which are not subject to intercepting or monitoring.

Any person, firm or corporation violating the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than two hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(b) Nothing contained in this section shall require marking of telephone instruments nor require consent to interception or monitoring, in the case of a wiretap or other form of monitoring which is engaged in for the sole purpose of law enforcement and which is lawful in all other respects.

(c) The public service commission shall not issue any rule or regulation requiring or suggesting the monitoring of any message, signal or other communication by telephone to or from any telephone utility customer so as to obtain the content or substance of any such 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.

1 Deputy sheriffs shall be allowed to engage in police work for pay in addition to their regular work as a deputy sheriff.

4 The deputy sheriffs civil service commission shall prescribe and enforce rules and regulations fixing the terms and conditions under which deputy sheriffs may engage in police work in addition to their normal duties as deputy sheriffs. These rules and regulations must prohibit discrimination, as far as practicable, between deputy sheriffs with regard to the allocation of additional police work. No sheriff may have a direct or indirect pecuniary interest in any outside employment. A deputy sheriff performing additional police work shall wear an identifying armband to indicate special 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 than twelve thousand five hundred which has not adopted civil service for deputy sheriffs pursuant to the provisions of chapter seven, article fourteen, section nineteen, may allow his deputy sheriffs to do additional police work in addition to his normal duties as a deputy sheriff. Before such sheriff shall be allowed to grant such additional police work to his deputy sheriffs, he must prepare a plan setting forth the terms and conditions under which his deputy sheriffs may engage in additional police work. Such terms and conditions must prohibit discrimination between deputies with
regard to the allocation of additional police work. Such plans shall be submitted to the county commission of such county and shall be subject to the approval of said county commission. No sheriff may have a direct or indirect pecuniary interest in any outside employment. A deputy sheriff performing additional police work shall wear an identifying armband to indicate special 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.]
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 maintain a drunk driving enforcement program for the purpose of enforcing drunk driving laws in the state, especially the investigation and apprehension of persons driving illegally on previously revoked or suspended operators' licenses for drunk driving related offenses. The superintendent shall develop a program in cooperation with local law-enforcement agencies to accomplish this purpose.

CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

Article
3. Cancellation, Suspension or Revocation of Licenses.
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 operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final: Provided,
2 That if the convicted driver had not reached his or her nineteenth birthday at the time of the conduct for which the license is revoked under this section, the license shall be revoked until the driver's nineteenth birthday, or the applicable statutory period of revocation, whichever is longer:
3 (1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;
4 (2) Any felony in the commission of which a motor vehicle is used;
5 (3) Failure to stop and render aid as required under the laws of this state in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another;
6 (4) Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
7 (5) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of twenty-four months;
8 (6) Driving under the influence of alcohol, controlled substances or other drugs outside the state of West Virginia which conviction is under a municipal ordinance or statute of the United States or any other state of an offense which has the same elements as an offense described in section two, article five, chapter seventeen-c of this code; and
9 (7) Nothing herein shall prohibit the department from exercising its authority to revoke or suspend a person's license to drive a motor vehicle in this state, as provided in chapter seventeen-c of this code.
§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.

The department upon suspending or revoking a license shall require that such license shall be surrendered to and be retained by the department: Provided, That before such license may be reinstated, the licensee shall pay a fee of fifteen dollars, in addition to all other fees and charges, which fee shall be collected by the department and deposited in the state road fund to be appropriated to the department for use in the enforcement of the provisions of this section. If any person shall willfully fail to return to the department such suspended or revoked license, the commissioner shall secure possession thereof through the department of public safety, a local law-enforcement agency, or other lawful means and return same to the department. Said superintendent of the department of public safety or local law-enforcement agency shall make a report in writing to the commissioner as to the result of his efforts to secure the possession and return of such license. For each license which shall have been suspended or revoked and which the holder thereof shall have willfully failed to return to the department within ten days from the time that such suspension or revocation becomes effective and which shall have been certified to the superintendent of the department of public safety as aforesaid, the holder thereof, before the same may be reinstated, in addition to all other fees and charges, shall pay a fee of fifty dollars, which shall be collected by the department of motor vehicles and paid into the state treasury and credited to the general fund to be appropriated to the department of public safety for 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.

(a) Except as otherwise provided in subsection (b) of
this section, any person who drives a motor vehicle on any public highway of this state at a time when his privilege so to do has been lawfully suspended or revoked shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for forty-eight hours and, in addition to such mandatory jail sentence, shall be fined not less than fifty dollars nor more than five hundred dollars; for the second offense, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period of ten days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the third or any subsequent offense, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for six months and, in addition to such mandatory jail sentence, shall be fined not less than one hundred fifty dollars nor more than five hundred dollars.

(b) Any person who drives a motor vehicle on any public highway of this state at a time when his privilege so to do has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for six months and in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the second offense, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period of one year and, in addition to such mandatory jail sentence, shall be fined not less than one thousand dollars nor more than three thousand dollars; for the third or any subsequent offense, such person shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one year nor more than three years and, in addition to such mandatory jail sentence, shall be fined not less than three thousand dollars nor more than five thousand dollars.
(c) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was lawfully revoked shall extend the period of such suspension for an additional like period and if the conviction was upon a charge of driving while a license was revoked lawfully the department shall not issue a new license for an additional period of one year from and after the date such person would otherwise have been entitled to apply for a new 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-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

§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 substance, or
5 (C) He is under the influence of any other drug, or
6 (D) He is under the combined influence of alcohol and any controlled substance or any other drug, or
7 (E) He has an alcohol concentration in his blood of ten hundredths of one percent or more, by weight; and
8 (2) When so driving does any act forbidden by law or
9 fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act
10 or failure; and
11 (3) Commits such act or failure in reckless disregard of
the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to such death, shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Drives a vehicle in this state while:
(A) He is under the influence of alcohol, or
(B) He is under the influence of any controlled substance, or
(C) He is under the influence of any other drug, or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug, or
(E) He has an alcohol concentration in his blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

(c) Any person who:

(1) Drives a vehicle in this state while:
(A) He is under the influence of alcohol, or
(B) He is under the influence of any controlled substance, or
(C) He is under the influence of any other drug, or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug, or
(E) He has an alcohol concentration in his blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes bodily injury to any person other than himself, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than one day nor
more than one year, which jail term shall include actual
confinement of not less than twenty-four hours, and shall
be fined not less than two hundred dollars nor more than
one thousand dollars.

(d) Any person who:
(1) Drives a vehicle in this state while:
(A) He is under the influence of alcohol, or
(B) He is under the influence of any controlled
substance, or
(C) He is under the influence of any other drug, or
(D) He is under the combined influence of alcohol and
any controlled substance or any other drug, or
(E) He has an alcohol concentration in his blood of ten
hundredths of one percent or more, by weight; and
(2) Shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be imprisoned in the county jail for
not less than one day nor more than six months, which jail
term shall include actual confinement of not less than
twenty-four hours, and shall be fined not less than one
hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic
drugs or amphetamine or any derivative thereof, drives a
vehicle in this state, shall be guilty of a misdemeanor, and,
upon conviction thereof, shall be imprisoned in the county
jail for not less than one day nor more than six months, which jail
term shall include actual confinement of not less than
twenty-four hours, and shall be fined not less than one
hundred dollars nor more than five hundred dollars.

(f) Any person who:
(1) Knowingly permits his vehicle to be driven in this
state by any other person who is:
(A) Under the influence of alcohol, or
(B) Under the influence of any controlled substance, or
(C) Under the influence of any other drug, or
(D) Under the combined influence of alcohol and any
controlled substance or any other drug, or
(E) Has an alcohol concentration in his blood of ten
hundredths of one percent or more, by weight; and
(2) Shall be guilty of a misdemeanor, and, upon,
conviction thereof, shall be imprisoned in the county jail for
not more than six months and shall be fined not less than
one hundred dollars nor more than five hundred dollars.
(g) Any person who:

101 knowingly permits his vehicle to be driven in this state by
102 any other person who is an habitual user of narcotic drugs
103 or amphetamines or any derivative thereof, shall be
104 guilty of a misdemeanor, and, upon conviction thereof,
105 shall be imprisoned in the county jail for not more than
106 six months and shall be fined not less than one hundred
107 dollars nor more than five hundred dollars.

(h) A person violating any provision of subsection (b),
109 (c), (d), (e), (f) or (g) of this section shall, for the second
110 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.

(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.

(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:

(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;

(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;

(3) Any conviction under a municipal ordinance of this
139 state or any other state or a statute of the United States or of
140 any other state of an offense which has the same elements as
142 an offense described in this section, which offense occurred
A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section, if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In such case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to drive as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

For purposes of this section, the term "controlled substance" shall have the meaning ascribed to it in chapter sixty-a of this code.

The sentences provided herein upon conviction for a violation of this article are mandatory and shall not be subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less.

The reenactment of this section in the regular session of the Legislature during the year one thousand nine hundred eighty-three, shall not in any way add to or subtract from the elements of the offenses set forth herein 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.

(a) If any person under arrest as specified in section four of this article refuses to submit to any secondary chemical test, the tests shall not be given: Provided, That prior to
such refusal, the person is given a written statement
advising him that his refusal to submit to the secondary test
finally designated will result in the revocation of his license
to operate a motor vehicle in this state for a period of at least
one year and up to life. If a person initially refuses to submit
to the designated secondary chemical test after being
informed in writing of the consequences of such refusal, he
shall be informed orally and in writing that after fifteen
minutes said refusal shall be deemed to be final and the
arresting officer shall after said period of time expires have
no further duty to provide the person with an opportunity to
take the secondary test. The officer shall within forty-eight
hours of such refusal, sign and submit to the commissioner
of motor vehicles a written statement of the officer that (1)
he had reasonable grounds to believe such person had been
driving a motor vehicle in this state while under the
influence of alcohol, controlled substances or drugs; (2)
such person was lawfully placed under arrest for an offense
relating to driving a motor vehicle in this state while under
the influence of alcohol, controlled substances or drugs; (3)
such person refused to submit to the secondary chemical
test finally designated in the manner provided in section
four of this article; and (4) such person was given a written
statement advising him that his license to operate a motor
vehicle in this state would be revoked for a period of at least
one year and up to life if he refused to submit to the
secondary test finally designated in the manner provided in
section four of this article. The signing of the statement
required to be signed by this section shall constitute an oath
or affirmation by the person signing such statement that the
statements contained therein are true and that any copy
filed is a true copy. Such statement shall contain upon its
face a warning to the officer signing that to willfully sign a
statement containing false information concerning any
matter or thing, material, or not material, is false swearing
and is a misdemeanor. Upon receiving the statement the
commissioner shall make and enter an order revoking such
person’s license to operate a motor vehicle in this state for
the period prescribed by this section.

For the first refusal to submit to the designated secondary
chemical test, the commissioner shall make and enter an
order revoking such person’s license to operate a motor
vehicle in this state for a period of one year. If the
commisioner has previously revoked the person's license
under the provisions of this section, the commissioner shall,
for the refusal to submit to the designated secondary
chemical test, make and enter an order revoking such
person's license to operate a motor vehicle in this state for a
period of ten years: *Provided*, That the license may be
reissued in five years in accordance with the provisions of
section three, article five-a of this chapter. If the
commissioner has previously revoked the person's license
more than once under the provisions of this section, the
commissioner shall, for the refusal to submit to the
designated secondary chemical test, make and enter an
order revoking such person's license to operate a motor
vehicle in this state for a period of life: *Provided*, That the
license may be reissued in ten years in accordance with the
provisions of section three, article five-a of this chapter. A
copy of each such order shall be forwarded to such person
by registered or certified mail, return receipt requested, and
shall contain the reasons for the revocation and shall
specify the revocation period imposed pursuant to this
section. No such revocation shall become effective until ten
days after receipt of the copy of such order. Any person who
is unconscious or who is otherwise in a condition rendering
him incapable of refusal, shall be deemed not to have
withdrawn his consent for a test of his blood, breath or
urine as provided in section four of this article and the test
may be administered although such person is not informed
that his failure to submit to the test will result in the
revocation of his license to operate a motor vehicle in this
state for the period provided for in this section.

A revocation hereunder shall run concurrently with the
period of any suspension or revocation imposed in
accordance with other provisions of this code and growing
out of the same incident which gave rise to the arrest for
driving a motor vehicle while under the influence of
alcohol, controlled substances or drugs and the subsequent
refusal to undergo the test finally designated in accordance
with the provisions of section four of this article.

(b) For the purposes of this section, where reference is
made to previous suspensions or revocations under this
section, the following types of suspensions or revocations
shall also be regarded as suspensions or revocations under
this section:—

(1) Any suspension or revocation on the basis of a
conviction under a municipal ordinance of another state or
a statute of the United States or of any other state of an
offense which has the same elements as an offense described
in section two of this article, for conduct which occurred on
or after June tenth, one thousand nine hundred eighty-
three; and

(2) Any revocation under the provisions of section one
or two, article five-a of this chapter, for conduct which
occurred on or after June tenth, one thousand nine hundred
eighty-three.

(c) A person whose license to operate a motor vehicle in
this state has been revoked shall be afforded an opportunity
to be heard, in accordance with the provisions of section
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.

(a) Any person who is licensed to operate a motor
vehicle in this state and who drives a motor vehicle in this
state shall be deemed to have given his consent by the
operation thereof, subject to the provisions of this article, to
the procedure set forth in this article for the determination
of whether his license to operate a motor vehicle in this state
should be revoked because he did drive a motor vehicle
while under the influence of alcohol, controlled substances
or drugs, or combined influence of alcohol or controlled
substances or drugs, or did drive a motor vehicle while
having an alcoholic concentration in his blood of ten
hundredths of one percent or more, by weight, or did refuse to submit to any designated secondary chemical test.

(b) Any law-enforcement officer arresting a person for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, shall take the person's license at the time of arrest and issue a temporary license, to be prescribed by the department of motor vehicles, pending a request for an administrative hearing, and shall report to the commissioner of the department of motor vehicles by written statement within forty-eight hours the name and address of the person so arrested. Such report shall include the specific offense with which the person is charged, and, if applicable, a copy of the results of any secondary tests of blood, breath or urine. The signing of the statement required to be signed by this subsection shall constitute an oath or affirmation by the person signing such statement that the statements contained therein are true and that any copy filed is a true copy. Such statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.

(c) If, upon examination of the written statement of the officer and the tests results described in subsection (b) of this section, the commissioner shall determine that a person was arrested for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, and that the results of the tests indicate that at the time the test or tests were administered the person had, in his blood, an alcohol concentration of ten hundredths of one percent or more, by weight, or at the time the person was arrested he was under the influence of alcohol, controlled substances or drugs, the commissioner shall make and enter an order revoking such person's license to operate a motor vehicle in this state. A copy of such order shall be forwarded to such person by registered or certified mail, return receipt requested, and shall contain the reasons for the revocation and the revocation periods provided for in section two of
this article. No revocation shall become effective until ten days after receipt of a copy of such order.

§17C-5A-2. Hearing; revocation; review.

(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been revoked under the provisions of section one of this article or section seven, article five of this chapter, the commissioner of motor vehicles shall extend the temporary license issued under section one of this article, if applicable, and afford the person an opportunity to be heard. Such written request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within ten days after receipt of a copy of the order of revocation. The hearing shall be before said commissioner or a hearing examiner retained by the commissioner who shall rule on evidentiary issues and submit proposed findings of fact and conclusions of law for the consideration of said commissioner and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply: Provided, That in the case of a resident of this state the hearing shall be held in the county wherein the arrest was made in this state unless the commissioner or his authorized deputy or agent and such person agree that the hearing may be held in some other county.

(b) Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written request therefor, unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on his own motion, or upon application for each person for good cause shown. The commissioner shall adopt and implement by a procedural rule written policies governing the postponement or continuance of any such hearing on his own motion or for the benefit of any law-enforcement officer or any person requesting such hearing, and such policies shall be enforced and applied to all parties equally. For the purpose of conducting such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code: Provided, That the notice of hearing to the appropriate
law-enforcement officers by registered or certified mail, return receipt requested, shall constitute a subpoena to appear at such hearing without the necessity of payment of fees by the department of motor vehicles. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(c) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the commissioner by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off-duty during said time.

(d) The principal question at such hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in his blood of ten hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test.

The commissioner may propose a legislative rule in compliance with the provisions of article three, chapter twenty-nine-a of this code, which rule may provide that if a person accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in his blood of ten hundredths of one percent or more, by weight, intends to challenge the results of any secondary chemical test of blood, breath or urine, or intends to cross-examine the individual or individuals who administered the test or performed the chemical analysis, he shall, within an appropriate period of time prior to the hearing, notify the commissioner in writing of such intention. Such rule may provide that when there is a failure to comply with the notice requirement, the results of the secondary test, if any, shall be admissible as though the person and the commissioner had stipulated the admissibility of such evidence. Any such rule shall provide
that the rule shall not be invoked in the case of a person who is not represented by counsel unless the communication from the commissioner to the person establishing a time and place for the hearing also informed the person of the consequences of his failure to timely notify the commissioner of his intention to challenge the results of the secondary chemical test or cross-examine the individual or individuals who administered the test or performed the chemical analysis.

(e) In the case of a hearing wherein a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, the commissioner shall make specific findings as to (1) whether the arresting law-enforcement officer had reasonable grounds to believe such person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, (2) whether such person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, and (3) whether the tests, if any, were administered in accordance with the provisions of this article and article five of this chapter.

(f) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person and was committed in reckless disregard of the safety of others, and, if the commissioner further finds that the influence of alcohol, controlled substances or drugs or the alcoholic concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of ten years: Provided, That if the commissioner has previously suspended or revoked the person's license
under the provisions of this section or section one of this article, the period of revocation shall be for the life of such person.

(g) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person's license for a period of five years: Provided, That if the commissioner has previously suspended or revoked a person's license under the provisions of this section or section one of this article, the period of revocation shall be for the life of such person.

(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article, the period of revocation shall be for the life of such person.

(i) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, or finds that the person,
being an habitual user of narcotic drugs or amphetamines or any derivative thereof, did drive a motor vehicle, or finds that the person knowingly permitted his vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted his vehicle to be driven by a person who had an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, the commissioner shall revoke the person’s license for a period of six months: Provided, That if the commissioner has previously suspended or revoked the person’s license under the provisions of this section or section one of this article, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person’s license more than once under the provisions of this section or section one of this article, the period of revocation shall be for the life of such person.

(j) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred on or after the first day of September, one thousand nine hundred eighty-one, and prior to the effective date of this section;

(2) Any conviction under the provisions of a prior enactment of section two, article five of this chapter for conduct which occurred within a period of five years immediately preceding the first day of September, one thousand nine hundred eighty-one;

(3) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter, for conduct which occurred on or after June tenth, one thousand nine hundred eighty-three;

(4) Any suspension or revocation on the basis of a conviction under a statute of the United States or of any
other state of an offense which has the same elements as an
offense described in section two, article five of this chapter,
or a prior enactment of said section, for conduct which
occurred within a period of five years immediately
preceding the first day of September, one thousand nine
hundred eighty-one;
(5) Any revocation under the provisions of section
seven, article five of this chapter, for conduct which
occurred on or after June tenth, one thousand nine hundred
eighty-three.
(k) In the case of a hearing wherein a person is accused
of refusing to submit to a designated secondary test, the
commissioner shall make specific findings as to (1) whether
the arresting law-enforcement officer had reasonable
grounds to believe such person had been driving a motor
vehicle in this state while under the influence of alcohol,
controlled substances or drugs, (2) whether such person was
lawfully placed under arrest for an offense relating to
driving a motor vehicle in this state while under the
influence of alcohol, controlled substances or drugs, (3)
whether such person refused to submit to the secondary test
finally designated in the manner provided in section four,
article five of this chapter, and (4) whether such person had
been given a written statement advising him that his license
to operate a motor vehicle in this state would be revoked for
at least one year and up to life if he refused to submit to the
test finally designated in the manner provided in section four,
article five of this chapter.
(l) If the commissioner finds by a preponderance of the
evidence that (1) the arresting law-enforcement officer had
reasonable grounds to believe such person had been driving
a motor vehicle in this state while under the influence of
alcohol, controlled substances or drugs, (2) such person was
lawfully placed under arrest for an offense relating to
driving a motor vehicle in this state while under the
influence of alcohol, controlled substances or drugs, (3)
such person refused to submit to the secondary chemical
test finally designated, and (4) such person had been given a
written statement advising him that his license to operate a
motor vehicle in this state would be revoked for a period of
at least one year and up to life if he refused to submit to the
test finally designated, the commissioner shall revoke the
person's license to operate a motor vehicle in this state for
the periods specified in section seven, article five of this chapter.

(m) If the commissioner finds to the contrary with respect to the above issues, he shall rescind his earlier order of revocation or shall reduce the order of revocation to the appropriate period of revocation under this section, or section seven, article five of this chapter.

A copy of the commissioner's order made and entered following the hearing shall be served upon such person by registered or certified mail, return receipt requested. During the pendency of any such hearing, the revocation of the person's license to operate a motor vehicle in this state shall be stayed.

If the commissioner shall after hearing make and enter an order affirming his earlier order of revocation such person shall not stay enforcement of the order; and, pending such appeal, the court may grant a stay or supersedeas of such order only upon motion and hearing, and a finding by the court upon evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits, and the appellant will suffer irreparable harm if such order is not stayed: Provided, That in no event shall the stay or supersedeas of such order exceed thirty days.

(n) In any revocation pursuant to this section, if the driver whose license is revoked had not reached his or her nineteenth birthday at the time of the conduct for which the license is revoked, the driver's license shall be revoked until the driver's nineteenth birthday, or the applicable statutory period of revocation prescribed by this section, whichever is longer.

(o) Funds for this section's hearing and appeal process may be provided from the drunk driving prevention fund, as created by section sixteen, article fifteen, chapter eleven of this code, upon application for such funds to the commission on drunk driving prevention.

§17C-5A-3. Safety and treatment program; reissuance of license.

(a) The department of motor vehicles, in cooperation with the department of health, the division of alcoholism and drug abuse, shall establish by rule and regulation a
comprehensive safety and treatment program for persons whose licenses have been revoked under the provision of this article, or section seven, article five of this chapter, or subsection (6), section three, article five, chapter seventeen-b of this code, and shall likewise establish the minimum qualifications for persons conducting the safety and treatment program. The program shall include, but not be limited to, treatment of alcoholism, alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving, or other safety driving instruction, and other programs designed to properly educate, train and rehabilitate the offender.

(b) (1) The department of motor vehicles, in cooperation with the department of health, the division of alcoholism and drug abuse, shall provide for the preparation of an educational and treatment program for each person whose license has been revoked under the provisions of this article or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code, which shall contain the following: (A) A listing and evaluation of the offender's prior traffic record; (B) characteristics and history of alcohol or drug use, if any; (C) his amenability to rehabilitation through the alcohol safety program; and (D) a recommendation as to treatment or rehabilitation, and the terms and conditions of such treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment. The cost of the program shall be paid out of fees established by the commissioner of motor vehicles in cooperation with the department of health, division of alcohol and drug abuse. These fees shall be deposited in a special account administering the program, to be designated the "driver's rehabilitation fund."

(2) The commissioner, after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state revoked under this article, or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code, which shall include successful
(A) When the period of revocation is six months, the license to operate a motor vehicle in this state shall not be reissued until (i) at least ninety days have elapsed from the date of the initial revocation during which time the revocation was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, and (iv) all costs assessed as a result of a revocation hearing have been paid.

(B) When the period of revocation is for a period of years, the license to operate a motor vehicle in this state shall not be reissued until (i) at least one half of such time period has elapsed from the date of the initial revocation during which time the revocation was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, and (iv) all costs assessed as a result of a revocation hearing have been paid.

(C) When the period of revocation is for life, the license to operate a motor vehicle in this state shall not be reissued until (i) at least ten years have elapsed from the date of the initial revocation, during which time the revocation was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, and (iv) all costs assessed as a result of a revocation hearing have been paid.

(D) Notwithstanding any provision of this code or any rule or regulation, the department of health, division of alcohol and drug abuse, when certifying that a person has successfully completed a safety and treatment program, shall only have to certify that such person has successfully 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.]
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; severence 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
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.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article.
1. Department of Commerce.
2. Office of Community and Industrial Development.
2B. Enterprise Zone Authority.
2C. Office of Federal Procurement Assistance.
3. West Virginia Export Development Authority.
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 commerce:
2 (1) The division of tourism;
3 (2) The division of advertising and promotion;
4 (3) The division of product marketing; and
5 (4) The division of parks and recreation.
Each said division shall be under the control of a director to be appointed by the commissioner who shall be qualified by reason of exceptional training and experience in the field of activities of his respective division and shall serve at the will and pleasure of the commissioner. The commissioner shall have authority to establish such additional divisions as may be determined necessary to carry out the purposes of this chapter.

All persons employed on the effective date of this chapter in the governor's office of economic and community development and the division of parks and recreation in the department of natural resources, the duties and functions of which have been transferred either to the department of commerce or the office of community and industrial development created by virtue of the provisions of the economic development act of one thousand nine hundred eighty-five, are hereby assigned and transferred to either the department of commerce or the office of community and industrial development, as the case may be, and no person's employment shall be eliminated, nor shall any person's salary, benefits or position classification be reduced or diminished by reason of the provisions of this chapter. All persons affected shall retain their coverage under the civil service system and all matters relating to job classification, job tenure, salary and conditions of employment shall remain in force and effect from and after the effective date of this chapter: Provided, That nothing herein shall prohibit the disciplining or dismissal of any employee for cause, or the dismissal of any nonclassified supervising employees appointed by the governor and serving at the will and pleasure of the governor.

§5B-1-6a. Program and policy action statement; submission to joint committee on government and finance.

The department of commerce, the office of community and industrial development and any other authorities, boards, commissions, corporations or other entities created or amended under chapter five-b and articles twenty-six-c and twenty-six-d, chapter eighteen of this code, shall prepare and submit to the joint committee on government and finance on/or before the first day of December, one thousand nine hundred eighty-six, and each year thereafter, a program and policy action statement which
10 shall outline in specific detail according to the purpose, powers and duties of the office or division, its procedure, plan and program to be used in accomplishing its goals and 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 community and industrial development:
2 (1) The division of community development;
3 (2) The division of financial and technical assistance;
4 (3) The division of administration;
5 (4) The division of industrial development;
6 (5) The division of research and strategic planning;
7 (6) The division of employment and training;
8 (7) The division of small business development; and
9 (8) The division of small business.
10 Each said division shall be under the control of a director to be appointed by the director of the office of community and industrial development and who shall be qualified by reason of exceptional training and experience in the field of activities of his respective division and shall serve at the will and pleasure of the director.
11 The governor is hereby authorized to establish and maintain foreign trade offices, personnel for same and 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 the office the duty and responsibility to conduct studies to determine the feasibility of establishing programs or recommending legislation for the establishment of programs relative to coal processing, farm development, forest resources, jobs development and a technical education system for new industry. Such division may conduct inquiries and hold hearings regarding such programs in order to provide interested persons the opportunity to comment, and shall report to the Legislature regarding its findings and policies with respect to each of these areas not later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty-seven, and every two years thereafter.

For the purpose of this section:

(a) The term "coal processing" means the process by which coal is converted to coke of the non-by-product variety;

(b) The term "farm development" means the promotion, encouragement and development of farming and farmlands;

(c) The term "forest resources development" means a program to: (i) Improve the business climate for forest industries and the general awareness of forestry potential; (ii) develop a strong state forestry agency; (iii) improve forest resources data; (iv) improve the transportation system for wood products; and (v) improve forestry knowledge and practices of private landowners;

(d) The term "jobs development" means a program to maintain existing employment, and to promote new employment opportunities for the people of this state, particularly in the areas of high unemployment; and

(e) The term "technical education system for new industry training" means a program to contract, provide grants, loans or other assistance, establish reimbursements and otherwise educate and train the state work force, on an as needed basis, for the purpose of attracting both new businesses to the state and of retooling, converting or otherwise modernizing existing businesses in the state; and which program is to include the review, updating and
modernizing of the state vocational technical centers and community college training programs for this purpose, so as to provide immediate technical training, specific to a new business or existing business. The feasibility studies provided for hereunder shall be performed in conjunction with either the institute of public affairs provided for in article twenty-six-c, chapter eighteen of this code, or the higher education industry partnerships provided for in article two-a, chapter five-b of this code.

§5B-2-5. Division of research and strategic planning; powers and duties.

(a) The division of research and strategic planning shall have the following powers and duties with respect to research:

(1) To establish as an independent entity at West Virginia University in cooperation with and involving other West Virginia colleges and universities a center for economic research. The center shall be under the control and supervision of a director, who shall be appointed by the president of West Virginia University. The center shall employ such staff economists or statisticians, such research assistants and secretaries, each of whom shall serve on a part-time basis and may be members of the faculty or staff of West Virginia University or any other college or university in the state. In addition, the center may employ student interns.

(2) The center shall provide the governor's office of community and industrial development, commissioner of commerce, and the Legislature, with an analysis of the quality of economic data pertaining to West Virginia. The center shall recommend ways to obtain additional information necessary to better understand the state's economy and to devise better economic development strategies. The center is directed to establish priorities and coordinate its economic research functions with the governor and the Legislature. To accomplish this purpose the advisory board created for the institute of public affairs in section one, article twenty-six-c, chapter eighteen of this code, shall serve as the advisory board to the center. The director of the center shall serve as the chairman of the advisory board. The center shall publish results of its
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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
state. Such plan shall include, but is not limited to, the following:

1. Assessing the state's economic strengths and weaknesses;
2. Developing and recommending short, intermediate and long-term economic goals and plans, together with options;
3. Identifying barriers to economic growth and diversification in the state;
4. Recommending implementation procedures and options utilizing and maximizing existing public and private mechanism;
5. Fostering and supporting scientific and technological research in this state in cooperation with the federal government, the various offices and divisions of the department of commerce and other state and local governmental agencies, educational institutions, nonprofit institutions and organizations, business enterprises and others concerned with scientific and technological research development;
6. Developing a program to attract investment in research and development in high technology industries;
7. Conducting a series of studies to determine the feasibility of constructing natural gas transmission lines, electric power generating facilities and coal processing plants to be owned, either in whole or in part, or to be operated, either in whole or in part, by the state of West Virginia; and
8. Maintaining a library of research materials, including computer data bases, to accomplish the goals of the division.

The division shall, based upon the data it collects and analyzes as set forth in subdivisions (1) through (8) of this section, and in cooperation with the other divisions of the department, develop a set of specific plans and programs, and recommend to the Legislature, on an annual basis, appropriate legislation to implement and carry out such plans, for the purpose of effectuating the purposes of this article.

§5B-2-6. Division of small business development; purposes; powers and duties generally.

It shall be the duty of the division of small business
development to establish a statewide small business
innovation center network to be located on the campuses or
operated in conjunction with the colleges and universities
of West Virginia.
The director shall be responsible for the management and
operation of the center network, subject to the program
policies adopted by the center network board of directors.
The center network shall:
(a) Serve as a liaison between the department of
commerce and the state regional small business innovation
center board;
(b) Provide direction, guidance and assistance to
regional small business innovation centers;
(c) Conduct feasibility studies regarding the
establishment or certification of new regional small
business innovation centers;
(d) Conduct conferences and seminars for regional
small business innovation centers to promote and
encourage the utilization of sound and innovative
approaches to the discharge of the functions and duties of
the regional small business innovation centers; and
(e) Prepare and submit such reports, plans, suggestions
and recommendations to the department on jobs and
economic development as may from time to time be
required.
To the extent practicable, the director shall utilize
student interns and qualified new and innovative business
vendors, including, but not limited to, private management
consultants, private consulting engineers and private
testing laboratories, to provide services described in this
section.
The director is further authorized and empowered to
apply for and receive appropriations, gifts, bequests or
grants of money, services, material, real estate or other
things of value from any agency of the United States
government, any agency of the state of West Virginia, any
municipality or county within this state, any school board
or college or university supported in whole, or in part, by
this state or any other person, firm, partnership, association
or corporation, within or without this state, and any agency
of the state of West Virginia, any municipality or county
within this state, or any school board or college or
university supported in whole, or in part, by this state and is
hereby authorized and empowered to make appropriations or grants to the regional small business innovation centers, to assist in achieving the public purpose of this section. All funds received by the director to carry out the provisions herein shall be deposited with the state treasurer and disbursed by the director to be used exclusively for carrying out the provisions herein. Any appropriations, gifts, bequests or grants received by the director with any restriction or restrictions on the use thereof shall be expended by the director in accordance with such restriction or restrictions.

The director of the state business innovation center in addition to such reports as may be required by the governor's office of community and industrial development shall publish an annual report by the first day of December of each year for distribution to the governor, the Legislature, the department and the general public. Such report shall describe the activities undertaken by the state center and the regional centers pursuant to these provisions in the preceding year.

§5B-2-6a. Regional small business innovation centers; locations; authority.

(a) Upon the recommendation of the state director and a demonstration for the need thereof, the state board of directors may certify and provide funding for such number of regional small business innovation centers as it may consider necessary or desirable and within available appropriations. Such regional small business innovation centers shall be affiliated with institutions of higher education, either public or private, and may be located at such places where need exists for such centers.

(b) It is recognized that there exists at the present time programs for the development of and assistance to small businesses in the statewide network of the West Virginia Small Business Development Center with regional centers operating at the University of Charleston, West Virginia University, West Virginia Northern Community College, Parkersburg Community College, Southern Community College of West Virginia, Concord College, Salem College, Alderson-Broaddus College, College of Graduate Studies, and West Virginia Institute of Technology. These existing
programs are hereby established as regional small business
innovation centers.
(c) Each regional business innovation center shall be
authorized and permitted to employ such strategies,
techniques and innovations as it shall deem desirable in
accomplishing the purposes of this article.
(d) The president of each institution of higher education
establishing a regional small business innovation center
shall appoint a director for such center who shall serve at
the will and pleasure of such president.

§5B-2-6b. State small business innovation center board
created; membership; regional center directors.

There is hereby created the state small business
innovation network board which shall be composed of one
member representing each of the regional centers to be
named by the president of the respective colleges or
universities, and the state director of the small business
innovation center network who shall serve as chairman of
the board.

§5B-2-6c. Functions and duties of regional centers.

It shall be the function of regional small business
innovation centers to:
(a) Establish programs to identify entrepreneurs with
marketable ideas and to support the organization and
development of new business and innovative businesses,
including technologically oriented enterprises;
(b) Conduct conferences and seminars to provide new
and innovative businesses with access to individuals and
organizations with specialized expertise;
(c) Develop and maintain a source file and an
information program to establish a statewide network of
public, private and educational resources to assist the
organization and development of new and innovative
businesses, and to furnish centralized services with regard
to public services and governmental programs;
(d) Provide new and innovative businesses with access
to managerial and technical expertise and to provide
assistance in resolving problems encountered by such
businesses;
(e) Conduct planning and research, including feasibility
studies and market research in cooperation with the
department;
(f) Assist in the identification and development of new
and innovative business opportunities;
(g) Foster the establishment and strengthening of
business service agencies, including trade associations and
cooperatives, which provide services to new and innovative
businesses;
(h) Implement the furnishing of business counseling,
management training and other related services, with
special emphasis on the development of management
training programs using the resources of the business
community, the state labor-management council and state
and private colleges and universities, and with emphasis
upon providing management training of sufficient scope
and duration to develop entrepreneurial and managerial
self-sufficiency on the part of the new and innovative
businesses served;
(i) Provide access to business analysts who can refer
new and innovative businesses to available experts;
(j) Conduct studies, research and counseling concerning
the managing, financing and operation of new and
innovative businesses;
(k) Foster and support scientific and technological
research for the development and application of new
technologies identified as having significant potential for
economic growth in the state or designed to further new and
more extensive uses of the natural and other resources of
the state, and to assist in technology transfer, research and
coupling from existing sources to new and innovative
businesses;
(l) Organize, conduct, sponsor or cooperate in and assist
the conducting of institutes, conferences, demonstrations
and studies relating to the stimulation and formulation of
new and innovative businesses;
(m) Assist new and innovative businesses in solving
problems concerning operations, manufacturing,
engineering, technology exchange and development,
personnel administration, marketing, sales,
merchandising, finance, accounting, business strategy
development and other disciplines required for business
growth and expansion, increased productivity and
management improvement;
(n) Provide access to professional specialists to conduct research or to provide counseling assistance to new and innovative businesses whenever the need arises;
(o) Determine the availability of financial resources and recommend methods for delivery of financial assistance to new and innovative businesses, including methods of securing equity capital;
(p) Cooperate with other regional business innovation centers for the purpose of coordinating efforts;
(q) Provide, whenever practicable, feasible and desirable, housing for new and innovative businesses in order to better accomplish the purposes set forth herein;
(r) Assist businesses participating in the program to develop comprehensive business plans with specific business targets, objectives and goals;
(s) Provide for such other nonfinancial services as deemed necessary for the establishment, preservation and growth of participating businesses, including, but not limited to, loan packaging, financial counseling, accounting and bookkeeping assistance, marketing assistance and management assistance;
(t) Assist participating businesses in obtaining equity and debt financing;
(u) Establish regular performance monitoring and reporting systems for participating businesses to assure compliance with their business plans;
(v) Analyze and report the causes of success and failure of new and innovative businesses participating in the program;
(w) Provide counseling and assist with technology development when necessary to help new and innovative businesses find solutions for complying with environmental, energy, health, safety and other federal, state and local laws and regulations;
(x) Apply for and receive gifts or grants in money or in kind from any person, organization, governmental agency or entity whatsoever which shall be exclusively utilized by the regional business innovation center receiving such gifts or grants; and
(y) Prepare an annual report by the first day of September of each year detailing the operation of the center for the previous year and submit the same to the director of the state business innovation center, and, as to regional
business innovation centers existing and incorporated by virtue of these provisions, prepare and submit by the first day of September, one thousand nine hundred eighty-five, a report to the same authorities detailing a preliminary plan for the implementation of the program, including coordination and expansion of the various original programs.

§5B-2-6d. Documentary materials concerning trade secrets; commercial or financial information; confidentiality.

Any documentary material or data made or received by any public body for the purpose of furnishing assistance to a new and innovative business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of such businesses, shall not be considered public records, and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of such trade secrets or commercial or financial information may be held by the public body in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code.

§5B-2-6e. Rules and regulations.

The director of the state small business innovation center shall make and adopt rules and regulations for the establishment, operation and maintenance of any regional business innovation center established including such rules, regulations and standards as may be necessary for compliance with any federal statute pertaining to grants-in-aid, and such other rules and regulations as may be necessary to effectuate the purposes set forth herein, including regulations establishing any fee to be charged for 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.

Effective the first day of July, one thousand nine hundred eighty-seven, the director, with the approval of the governor, is hereby empowered to provide reduced rate
loans to private companies for the building of coal processing facilities for the making of coke for steel production. Funds for such loans shall be provided from moneys borrowed from the workers' compensation fund or any fund administered by the state. The loans will be repaid through the governor's office of community and industrial development to the fund from which they were borrowed. The rate of interest charged shall be two percent below the current prime lending rate for funds available from private sources in projects of a similar nature. The state shall fund no more than eighty percent of the total cost of the project. The private company sponsoring the project must provide the other twenty percent of the project's funds from its own capital or from moneys borrowed from nonpublic sources. The moneys borrowed are to be used for the construction of coal coking facilities and related buildings and other structures: Provided, That all coal processed at this facility during the time when loan moneys are being utilized and for five years following the repayment of the loan must be coal mined exclusively in West Virginia. A private company applying to the governor's office of community and industrial development for a loan pursuant to this section shall certify on its loan application that the reduced rate loan will be used exclusively for constructing coal coking facilities for the process of converting West Virginia coal to coke. The director is authorized to promulgate rules and regulations consistent with the provisions of this section to 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-1. Legislative purpose.

1 A pressing need exists for collaborative research and
development between institutions of higher education and
industry. This need also extends to assisting companies to
develop and adapt to new technology. A commitment by the
state to support cooperative university-industry
partnerships will preserve existing jobs and create new
jobs; promote development of business enterprises and help
them become competitive; and enable West Virginia to
achieve the goals of economic growth and full employment
by revitalizing and diversifying the West Virginia economy.
Focused research and technical assistance efforts related to
West Virginia industry will speed such development,
impacting technology transfer, assist companies in becoming
growth leaders and link basic research and technological
developments to economic advancement.

§5B-2A-2. University-industry research and development
centers.

University-industry research and development centers
shall be established near or on selected college and
university campuses as approved by the board of trustees
and the board of regents. Joint research and development
efforts at each center shall be dedicated to one or several
targeted industries or processes. Centers may concentrate
on such topics as coal products and uses; materials and
coatings production processes; flexible manufacturing,
robotics and microprocessor controlled production;
biotechnology applications; glass and silicon products;
materials handling and distribution; wood and coal as
feedstocks for the chemical industry; the relationship
between labor and management and the changes faced by
each of them; the promotion of West Virginia products and
international trade; and cellulose, timber and paper
products. In addition to any other state moneys received,
each proposed center may apply for grants pursuant to the
provisions of section six of this article.

§5B-2A-3. Higher education-industry collaboration and
technical assistance.

Institutions of higher education and corporations may
engage in collaborative projects designed to assist
companies to adapt or develop new technology. Through
such collaborative efforts, each project may be eligible to
receive financial support through the matching grant programs defined in this article.

Each center is authorized and empowered to solicit and accept financial support from sources other than the state. Each center shall deposit all funds received into a special revenue account in the state treasury. A special revenue account shall be established for each center.

§5B-2A-4. Vandalia partnership program for research and technical assistance.

The director shall have the authority to allocate any funds available to higher education-industry projects operating under the provisions of this article. The amount of the grant may not exceed the level of contribution from combined academic and corporate sources.

It shall be the duty of the director to develop a program, to be known as the Vandalia partnership program, to bring together, through challenge or matching grants, partners from the business, industry, public and educational sectors to develop and apply technologies which will strengthen existing business and stimulate the formation of new firms and products including:

1. (1) Joint research and development projects. — Such projects shall require a joint effort of a West Virginia business and a higher educational institution of this state with the potential for preserving or creating jobs in this state;

2. (2) Education and training projects. — Such projects shall include employment training or retraining, labor market and occupational analysis, new courses, sharing of costly equipment, educational or technical assistance with the small business innovation centers; and

3. (3) Entrepreneurial development projects. — Such projects shall include technical assistance, development of business plans management counseling, technology transfer, venture capital assistance with emphasis on establishing new projects, processes or services.

§5B-2A-5. Vandalia partnership fund.

There is hereby established a Vandalia partnership fund to which shall be credited any state appropriations, gifts, grants or other moneys available to the fund.
The center shall invest and reinvest the fund, and the
income thereof, pending use for the purposes of this article.
The fund shall operate as a revolving fund whereby all
appropriations and payments thereto may be applied and
reapplied by the center for the purposes of this article.

§5B-2A-6. Application for grants; eligibility and criteria.

Applicants for grants shall submit a proposal which shall
set forth the nature of the project, the commitment from the
partners either in money, equipment or in kind services and
the request for funding. Private, public and educational
financial support shall be required as part of each
application. Proposals for funding will be reviewed on a
competitive basis by a panel of experts appointed by the
board of trustees.

Among the criteria used to evaluate each proposal will be:

(a) Probability of advancing the success of a company
doing business in the state;

(b) Likelihood of creating jobs, conserving jobs, or
leading to a new or expanded industry or venture in the
state;

(c) Promise of transferring the research and
development findings to marketable products;

(d) Level of financial contribution from corporate or
other sources;

(e) Technical or scientific feasibility of the effort, and
competency of the team to produce useful results; and

(f) Probability of strengthening the permanent research
and development base of both the institutions of higher
education in West Virginia and industry or sustaining
partnerships.

§5B-2A-7. Board of trustees; grants; authority.

There is hereby created a board of trustees consisting of
the director, the governor or his designee, the chancellor of
the board of regents or his designee, and two persons
representative of business and industry to be appointed by
the governor, with the advice and consent of the Senate.
The board shall have the authority to review and approve
all applications for grants or funds hereunder according to
the purposes of this article, and the rules and regulations
promulgated hereunder.
§5B-2A-8. Appointment of the director.

1 The director shall be appointed by the governor from a list of three persons submitted by the board of regents. The board of regents shall within thirty days of the effective date of this article appoint a search committee of representatives of the educational, government, business and labor sectors to solicit and interview candidates for the position of director. The director shall be qualified by knowledge and experience in the field of research and technology programs.


1 On the first day of January of each year, the director shall submit a report on the operation of the center to the governor and to the Legislature. Such report shall include a summary of the activities of the center and a complete 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, safety and welfare of the people of West Virginia are enhanced by the continual encouragement, development, growth and expansion of private enterprise within this state, and that there are certain economically depressed areas in the state that need particular attention to create new jobs, stimulate economic activity and attract private sector investment rather than government subsidy to improve the quality of life of their citizens. It is the purpose of the Legislature to encourage new economic activity in these depressed areas of the state by means of reduced taxes
and the removal of unnecessary governmental barriers to
the production and earning of wages and profits and the
creation of economic growth.

§5B-2B-2. Definitions.

As used in this article, unless the context clearly indicates
otherwise:

(a) "Authority" means the enterprise zone authority of
West Virginia.

(b) "Enterprise zone" means an area of the state
designated by the authority to be eligible for the benefits of
this article.

(c) "Qualified business" means any person, corporation
or other entity who, during the time of designation of an
enterprise zone, is engaged in the active conduct of a trade
or business:

(1) With at least fifty percent of its employees
performing substantially all of their services within an
enterprise zone; and

(2) With individuals from one or more of the following
three categories constituting at least twenty-five percent of
the business’s employees:

(i) Residents of an enterprise zone;

(ii) Individuals who have been unemployed for at least
twelve months immediately prior to obtaining employment
with the business; or

(iii) Individuals who have received public assistance
benefits for at least twelve months immediately prior to
obtaining employment with the business.

(d) "Qualified property" means:

(1) Any tangible personal property located in an
enterprise zone used predominantly by the taxpayer in the
zone in the active conduct of a trade or business; or

(2) Any real property located in such zone which:

(i) Was used predominantly by the taxpayer in the
active conduct of a trade or business; or

(ii) Was the principal residence of the taxpayer on the
date of the sale or exchange;

(3) Any interest in a corporation, partnership or other
entity if, for the most recent taxable year of such entity
ending before the date of the sale or exchange, such entity
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
accordance with the provisions of chapter twenty-nine-a of this code to carry out the purposes of this article;

(5) To assist units of local government in obtaining federal status as an enterprise zone;

(6) To assist any qualified business in obtaining the benefits of any incentive or inducement program provided by law and to certify qualified businesses to be eligible for the benefits of this article; and

(7) To assist the governing authority of an enterprise zone in obtaining assistance from any other agency of state government including, but not limited to, assistance in providing training and technical assistance to qualified businesses within a zone.

§5B-2B-4. Duties of the authority.

(a) The authority shall establish and design for public display a master business license which shall certify that the qualifying business has obtained all necessary state agency permits, licenses, certificates, approvals, registrations, charters or any other form of permission required by law, including agency rule, to engage in business in an enterprise zone.

(b) The authority shall provide information and appropriate assistance to persons desiring to locate and engage in business in an enterprise zone regarding the state licenses, permits, certificates, approvals, registrations, charters and any other forms of permission required by law to engage in business in the state.

(c) Irrespective of any authority delegated to the authority to implement the provisions of this article, the authority for determining if any requested licenses, permits, certificates, approvals, registrations, charters or any other form of permission required by law shall be issued shall remain with the agency otherwise legally authorized to issue the permission required.

§5B-2B-5. Enterprise zone tax exemptions.

Notwithstanding any provision of this code to the contrary, the following exemptions apply to enterprise zones:

(1) All interest payments on loans made to qualified businesses or on mortgage loans on any property within an
enterprise zone shall receive a fifty percent reduction of all state taxes if such loans were made after the enterprise zone was officially designated;

(2) Building materials used in remodeling, rehabilitation or new construction in an enterprise zone and new and used equipment and machinery purchased by qualified businesses for use in the enterprise zone, certified by the purchaser to be used for these purposes, shall be exempt from sales and use tax;

(3) Motor vehicles purchased from a seller located within the enterprise zone by qualified businesses in an enterprise zone shall receive a fifty percent reduction of the motor vehicle privilege tax;

(4) Qualified businesses shall receive a tax credit in the amount of unemployment compensation taxes paid in accordance with article five, chapter twenty-one-a of this code, against any corporate net income or personal income tax liability of such qualified business; and

(5) For state tax purposes, qualified businesses may carry forward their net operating losses, including casualty losses, for the period of existence of the enterprise zone in which the qualified business is located.

§5B-2B-6. Administrative regulation exemptions.

(a) In order to carry out the purposes of this article, any administrative body which promulgates administrative regulations pursuant to chapter twenty-nine-a of this code may, by regulation, exempt enterprise zones from the provisions of any regulation, in whole or in part, promulgated by that administrative body.

(b) Enterprise zones shall not be made exempt from the provisions of any regulation if such exemption endangers the health and safety of the citizens of the state as determined by the administrative body responsible for promulgation and enforcement of such regulation.

(c) The authority shall conduct a review of all state regulations and shall recommend to the appropriate administrative bodies the exemption of regulations promulgated by such body which would contribute to the implementation of this article.

(d) Any exemption of a regulation in enterprise zones shall be adopted by regulation in the manner provided by chapter twenty-nine-a of this code.
§5B-2B-7. **Economically depressed areas; designation.**

(a) Any municipal or county government by act of the governing body may designate any area or areas within their jurisdiction to be an economically depressed area. Such municipal or county government may then make written application to the authority to have such area or areas declared to be an enterprise zone. If the area designated by a county government includes a municipality or part thereof, the county government shall receive the approval of the municipal government for the inclusion of said municipality or part thereof. Such application shall include a description of the location of the area or areas in question and such other information as the authority may require.

(b) Upon receipt of an application from a municipal or county government, the authority shall review the application to determine whether the area or areas described in the application qualify to be designated an enterprise zone.

(c) The authority shall complete its review within one hundred twenty days of receipt of the application but may extend this time period an additional sixty days for good cause. If the authority denies the application, it shall inform the unit of local government of the fact along with the reasons for the denial.

§5B-2B-8. **Enterprise zone requirements for creation.**

(a) Any area or areas of a city, county, or of the state, may be designated an enterprise zone which:

(1) Has a continuous boundary; and

(2) Is an area of pervasive poverty, unemployment and economic distress.

(b) An area meets the requirements of subdivision (2), subsection (a) of this section, if:

(1) The average rate of unemployment in such area for the most recent eighteen-month period for which data are available was at least one and one-half times the average national rate of unemployment for such eighteen-month period;

(2) At least seventy percent of the residents living in the proposed enterprise zone have incomes below eighty percent of the median income of the residents of the county.
or counties requesting designation as certified in a statistical report prepared by the state tax department; or

(3) The population of all census tracts in the area decreased by ten percent or more between the two most recent decennial United States census and the city or county requesting designation establishes to the satisfaction of the authority that either:

(i) Chronic abandonment or demolition of commercial or residential structures exist in the area; or

(ii) Substantial tax delinquencies relating to ad valorem real property taxes of commercial or residential structures exist in the area.

§5B-2B-9. Designation of enterprise zones; conditions for preference of enterprise zones.

(a) In each of the three calendar years after the calendar year one thousand nine hundred eighty-six, the authority may designate two enterprise zones. In the fourth calendar year after the year one thousand nine hundred eighty-six, the authority may designate one enterprise zone. In deciding which areas should be designated as enterprise zones the authority shall give preference to:

(1) Areas with the highest levels of poverty, unemployment and general distress;

(2) Areas which have the widest support from the government seeking designation, the community, residents, local business and private organizations; and

(3) Areas for which the government seeking designation has made or will make the greatest effort to encourage economic activity and remove impediments to job creation, including, but not limited to, a reduction of tax rates or fees and increase in the level or efficiency of local services and a simplification or streamlining of governmental requirements on employers or employees, taking into account the resources available to such government to make such efforts.

(b) Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of designation and ending on the thirty-first day of December of the twentieth year following the year of designation.

(c) The authority may remove designation of any area as
an enterprise zone if such area no longer meets the criteria for designation as set out in this article, and by regulation adopted by the authority pursuant to this article. No designation shall be removed less than ten years from the 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.

(a) The Legislature finds that West Virginia ranks significantly behind almost all other states in the manufacture and production of products or its services sold to the federal government; that there is a need to identify those businesses in West Virginia which manufacture or produce products or services which are marketable for sale to the federal government; and that there is a need to develop an aggressive marketing strategy to provide opportunities for West Virginia businesses to compete with other states in sales to the federal government; that there is a need to assist small and emerging science and technologically oriented businesses in applying for federal contracts.

(b) The Legislature finds that it is the purpose of the office of federal procurement assistance to encourage and assist the state businesses through loans, investments, research, technical and managerial advice and other similar means in the sales of products and services to the federal government including the general services administration, the national aeronautics and space administration, and the department of defense.

(c) There is hereby created, within the governor's office of community and industrial development, the office of federal procurement assistance. A director of the office shall be appointed by the governor with the advice and consent of the Senate. The director shall have administrative control and supervision of the office.
The director shall promulgate rules and regulations to carry out the purposes and programs of the office, to include generally the programs available, and the procedure and eligibility of application relating to assistance under such programs.

§5B-2C-2. Duties and powers.

1. It shall be the duty of the office of federal procurement assistance:

1. (1) To prepare an inventory of state businesses which have the potential of selling goods or products to the federal government;

2. (2) To prepare and periodically issue a register of federal contracts in accordance with applicable federal laws or regulations for which businesses of the state of West Virginia may qualify for bidding;

3. (3) To sponsor and conduct conferences, collect and disseminate information and issue periodic reports relating to the availability of federal contracts upon which state businesses can bid;

4. (4) To identify emerging needs of the federal government and emerging technologies which will meet those needs, and develop an action plan of equipping and preparing businesses in this state to meet those needs with products and services, which plan shall be reduced to writing, and annually reviewed and updated, and shall be included in the annual report to the Legislature required under this article;

5. (5) To directly assist, both technically and financially, businesses within this state in qualifying for and bidding on federal contracts including dissemination; and

6. (6) To develop a formal liaison or other entity with the congressional delegation of this state and with the governor to develop a specific plan of action utilizing the good offices and assistance of the congressional delegation in carrying 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 assistance and the corresponding duty of the West Virginia industrial and trade jobs development corporation to develop, maintain and implement a program of technical
and financial assistance available under article two, chapter five-c of this code, and specifically targeted to businesses identified under this article as having the potential of selling goods or products to the federal government, including the issuance of revenue bonds by the economic development authority, or the issuance of other 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 Development Authority," a body politic and corporate, hereinafter referred to as the "Authority."

2. The purpose of this authority shall be to:

   (a) Assist, promote, encourage, develop and advance economic prosperity and employment throughout this state by fostering the expansion of exports of manufactured goods and services to foreign purchasers;

   (b) Cooperate and act in conjunction with other organizations, public and private, the objects of which are the promotion and advancement of export trade activities in the state of West Virginia;

   (c) Establish a source of funding credit guarantees and insurance to support export development not otherwise available to West Virginia small and medium sized businesses; and

   (d) Provide financial counseling and assistance to potential and existing exporters.

§5B-3-5a. Duties.

1. The authority shall have the following duties:

   (a) To create and develop a computer based state trade leads program as follows:

   (1) To prepare an inventory of state products that are currently and potentially exportable, together with the firms offering such products, by standard industrial classification (SIC) and by applicable international classification;
(2) To develop a program that will match state products as classified with trade leads from foreign countries or their agents, representatives or distributors, by utilizing the United States Department of State, the Agency for International Development (AID), the World Bank, or all other available resources; and

(3) To develop a program of personal contact with firms requesting such current and available trade leads as providing follow-up assistance to interested firms in the state;

(b) To assist, promote, encourage, develop and advance economic prosperity and employment throughout this state by fostering the expansion of exports of manufactured goods and services to foreign purchasers;

(c) To cooperate and act in conjunction with other organizations, public and private, the objects of which are the promotion and advancement of export trade activities in the state;

(d) To establish a source of funding credit guarantees and insurance for political and commercial loss, as defined in this article, to support export development not otherwise available to West Virginia small and medium sized businesses;

(e) To provide financial counseling and assistance to potential and existing exports;

(f) To research and identify those foreign countries with the greatest potential for importing state products, and for foreign investment in West Virginia, for the purposes of promoting and facilitating trade with such countries, the investment of capital by such countries in this state, and for other economic activities including tourism;

(g) To seek foreign trade zone status for, and to assist in the applications for foreign trade zone status of political 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.

The labor-management council and the regional advisory committees shall constitute an independent agency housed within the governor's office of community and industrial
development. The council shall appoint a director and other
staff for the council. Funds for necessary staff, supplies and
other expenses shall be paid from and with an
appropriation by the Legislature as well as reimbursements
for each member of the council and of the regional advisory
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.

The following words and phrases as used in this article,
shall have the meanings set forth below, unless the context
clearly indicates otherwise:

(a) Director. — The director of the governor's office of
community and industrial development.

(b) Office. — The governor's office of community and
industrial development.

(c) Employee-owned enterprise. — A business which
either:

(1) Meets all of the following conditions:

(i) Is organized as:

(A) A worker cooperative, within the meaning of the
Internal Revenue Code of 1954, as amended; or

(B) A corporation in which employees own the stock of
the corporation through an employee stock ownership plan,
within the meaning of section 4975(e)(7) of the Internal
Revenue Code of 1954, as amended;

(2) Is organized in a manner determined by the director
to involve substantial employee participation.

(d) Employee-owned group. — A corporation or other
entity, including labor unions, formed by or on behalf of the
current or former employees of an industrial or commercial
firm or facility located in this state for the purpose of
assuming ownership or control of a firm or facility and
operating it as an employee-owned enterprise.
§5B-5-2. Employee-ownership program.

1 The office will establish a technical and financial assistance program to promote the development of employee-owned enterprises.

§5B-5-3. Technical assistance.

1 (a) Authorization to advance funds. — The office is authorized to advance funds for the purpose of providing loans to employee-ownership groups in industrial and commercial enterprises for technical assistance to develop or improve an employee-owned enterprise.

2 (b) Eligibility. — Employee-ownership groups shall be eligible for assistance if the employees in the employee-ownership group are employed by, formerly employed or affiliated with one of the following:

3 (1) Existing firms facing a threat of substantial layoffs or a plant closing and investigating a reorganization of all or some portion of the firm's business activity, at sites located within the state, as an employee-owned enterprise. For purposes of this section, "existing firms" shall include an ongoing concern, the assets of an existing company or the assets of a company which has been closed for no more than one year as of the date of the application for the feasibility study loan.

4 (2) Existing firms, not necessarily facing a threat of substantial layoffs or a plant closing, but considering a conversion to an employee-owned enterprise and seeking professional services to accomplish this, if conversion to employee ownership will create new jobs or retain existing jobs at sites within the state.

5 (3) Existing firms which currently have some form of employee ownership and require professional services to ensure success of the employee-owned enterprise in its effort to create new jobs or retain existing jobs at sites within the state.

6 (c) Uses. — Loans will be made to employee-ownership groups for the following purposes:

7 (1) Feasibility studies to investigate a reorganization or new incorporation as an employee-owned enterprise. At a minimum, the feasibility study should:

8 (i) Assess the market value and demand for the product affected by the closing or layoff.
(ii) Assess the market value and demand for other products which could be manufactured or assembled at the plant affected by the closing or layoff.

(iii) Evaluate the production costs incurred if the plant were to be operated by the employee-ownership group.

(iv) Determine whether there exists in the affected area and in the employee-ownership group, the desire and capacity to create a new production entity and to become competitive.

(2) Professional services to implement a feasibility study and other professional services to develop or ensure the success of an employee-owned enterprise.

(d) Repayment. — Loans provided for feasibility studies and other professional services to employee-ownership groups to investigate a conversion to an employee-owned enterprise are subject to the following repayment conditions:

(1) If the enterprise studied is purchased or improved by the employee group, the employee group shall arrange to repay the entire amount of the loan, with interest, either at the closing of the purchase of the company or within a reasonable time period and under such terms and conditions as the director may provide.

(2) If the enterprise studied is not purchased by the employee group within one year after the completion of the feasibility study, the applicant shall submit a final report concerning the feasibility of repaying the loan.

(e) Other conditions:

(1) The applicant shall provide evidence that there is a prospect for recovery and future job growth or job retention in applications under subdivision (1), subsection (b) or a substantial prospect of job growth or job retention in applications under subdivisions (2) and (3), subsection (b) of this section.

§5B-5-4. Financial assistance.

(a) Authorization to advance funds. — The office is authorized to advance funds for the purpose of providing loans and loan guarantees to employee-owned enterprises reorganizing industrial, manufacturing, agricultural and service enterprises for the development of employee-owned enterprises.

(b) Eligibility. — Eligibility for this assistance shall be
 limited to employee-ownership groups reorganizing an existing enterprise which is facing a threat of substantial layoffs or a plant closing, where adequate private financing is not available. For purposes of this subsection, "existing enterprise" shall include an ongoing concern, the assets of an existing company or the assets of a company which has been closed for no more than one year as of the date of completion of a feasibility study.

(c) Uses. — Eligible project costs shall include land and buildings, machinery and equipment, and working capital secured by accounts receivable and inventory.

(d) Debt instruments. — The financial subsidy provided should be the minimum necessary to accommodate the borrower's financial needs. Debt instruments shall include either or both of the following:

(1) Loans, including deferred interest and principal payments; and

(2) Loan guarantees.

(e) Security. — Funds loaned shall be secured by lien positions on collateral at the highest level of priority which can accommodate the borrower's ability to raise sufficient debt and equity capital. When the obligation of a firm is guaranteed, the financial institution holding the obligation shall be required to adequately secure the obligation.

(f) Equity requirement. — A significant equity investment by the employee-ownership group equal to at least ten percent of the project costs and including substantial participation by at least two thirds of the members of the employee-ownership group is required to qualify for the loan or guarantee.

(g) Feasibility study. — Assistance shall not be approved without a feasibility study demonstrating a substantial prospect for job retention or future job growth and a business plan including steps to facilitate labor-management cooperation. General adherence to the plan is required to receive funding.

§5B-5-5. Criteria for evaluating applications.

The office shall evaluate the applications based on the following criteria:

(1) Number of jobs retained or created in relation to the size of the loan. The loans shall not exceed a cost of fifteen thousand dollars per job created or retained;
(2) Ability of the applicant to repay the loan and the likelihood of retaining or creating jobs;

(3) Evidence of other private financial commitments;

(4) Evidence that, without the financial assistance, other federal, state or local public and private investment would be insufficient to finance the employee-owned enterprise;

(5) The extent to which a firm employs a significant number of employees or represents a significant portion of employment in the community; and

(6) Any additional criteria specified by the office in regulations promulgated hereunder.

§5B-5-6. Administration of the program.

(a) Responsibility. — The office will be responsible for promoting the program, soliciting applications, evaluating applications and making preliminary decisions on both technical assistance and financial assistance.

(b) Approval by director. — The director will have full responsibility for final approval of all applications for assistance.

(c) Advances. — The office may make advances for the purpose of making loans or loan guarantees consistent with this act.

(d) Loan and loan guarantee fees. — The office may establish and charge reasonable fees for processing loans or loan guarantees under section four by order of the director.

(e) Rules and regulations. — The director may promulgate any rules and regulations, statements of policy, forms, guidelines and other procedures, forms and requirements necessary for the implementation of the proposals set forth herein.

§5B-5-7. Nondiscrimination.

No loan, loan guarantee or other financial assistance shall be made to a recipient under this act unless the recipient certifies to the office, in a form satisfactory to the office, that it shall not discriminate against any employee or against any applicant for employment because of race, 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.

For the purpose of this article:

(1) The term "enterprise" means a business entity which is or proposes to be engaged in this state in any commercial activity for profit. The entity may be owned, operated, controlled or under the management of a person, partnership, corporation, community-based development organization or council, local commerce group, employee stock ownership plan, pension or council, pension or profit-sharing plan or trust, a group of participating employees who desire to own an entity which does not presently exist, or any similar entity or organization;

(2) The term "board of investments" means the board of investments established by article six, chapter twelve of this code;

(3) The term "borrower" means an enterprise, any of its subsidiaries or affiliates, or any other entity the board of investments may designate from time to time which borrows funds for the benefit or use of an enterprise;

(4) The term "corporation" means the West Virginia industry assistance corporation, unless the context in which such term is used clearly indicates that reference is made to some other corporation;

(5) The term "financing plan" means a plan designed to meet the financing needs of an enterprise as reflected in the operating plan;

(6) The term "fiscal year" means the fiscal year of an enterprise; and

(7) The term "operating plan" means a document detailing production, distribution, and sales plans of an enterprise, together with the expenditures necessary to 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
denominated the "West Virginia Automobile Industry
9 Assistance Corporation," shall hereafter be designated the
10 "West Virginia Industry Assistance Corporation" (hereinafter referred to as the "corporation"). The board of
directors first appointed shall be deemed the incorporators,
and the incorporation shall be held to have been effected
from the date of the first meeting of the board.
(b) The corporation is created and established to serve a
public corporate purpose and to act for the public benefit
and as a governmental instrumentality of the state of West
Virginia, to act on behalf of the state and its people in
improving their health, welfare and prosperity.
(c) The corporation:
(1) Shall have succession in its corporate name;
(2) May sue and be sued in its corporate name;
(3) May adopt and use a corporate seal, which shall be
judicially noticed;
(4) May make contracts as herein authorized; and
(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
two of the directors shall be from the same political party.
In appointing the board, the governor shall designate the
chairman, vice chairman and treasurer. All other officials,
agents and employees shall be designated and selected by
the board.
(b) The terms of office of the members first taking office
on or after the first day of July, one thousand nine hundred
eighty-six, shall expire as designated by the governor at the
time of the nomination, one at the end of the second year,
one at the end of the fourth year and one at the end of the
sixth year, after the first day of July, one thousand nine
hundred eighty-six. A successor to be a member of the
board shall be appointed in the same manner as the original
members and shall have a term of office expiring six years
from the date of the expiration of the term for which his
predecessor was appointed.
(c) In cases of any vacancy in the office of director, such
vacancy shall be filled by appointment by the governor. Any
member appointed to fill a vacancy in the board occurring
prior to the expiration of the term for which his predecessor
was appointed shall be appointed for the remainder of such
term.
(d) The governor may remove a director in the case of
incompetence, neglect of duty, gross immorality or
malfeasance in office, and may declare such director's
office vacant and appoint a person for such vacancy as
provided in other cases of vacancy.
(e) Vacancies in the board, so long as there shall be two
members in office, shall not impair the powers of the board
to execute the functions of the corporation, and two of the
members in office shall constitute a quorum for the
transaction of the business of the board.
(f) Each of the members of the board shall be a citizen of
the state of West Virginia. The compensation of each
member of the board shall be paid by the corporation as
current expenses. Members of the board shall be
reimbursed by the corporation for actual expenses
(including traveling and subsistence expenses) incurred by
them in the performance of the duties vested in the board by
this article. No member of said board shall, during his
continuance in office, be engaged in any other business, but
each member shall devote himself to the work of the
corporation.
§5C-1-9. Corporation powers.

In order to foster and expand industry and trade in this state, the corporation is empowered and directed:

(a) To provide, construct, operate, maintain and improve such gas and oil pipelines, electric transmission lines, substations, and facilities and structures appurtenant thereto, as it finds necessary, desirable and appropriate for the purpose of transmitting gas, oil and electric energy, available for sale, from sources within this state to existing and potential markets, and, for the purpose of interchange of energy, to interconnect sources within this state with either private projects, other state or federal projects, and publicly owned power systems now or hereafter constructed;

(b) To provide for the construction and maintenance of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and other access ways to facilitate the ingress and egress to industrial sites belonging to an enterprise;

(c) To construct, acquire, operate, maintain and improve such waterworks systems and waterlines, sewer systems and sewage treatment and disposal systems, or any combination thereof, as it finds necessary, desirable and appropriate for the purpose of assisting an enterprise in carrying out its operating plan, and to acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to such system or systems; and ways to facilitate the ingress and egress to industrial sites belonging to an enterprise;

(d) To acquire, by purchase, lease or donation, such real or personal property, or any interest therein, including buildings, lands, easements, facilities, equipment, rights-of-way, franchises, oil or gas pipelines, electric transmission lines, substations and facilities and structures appurtenant thereto, waterworks systems and waterlines, and sewer systems and sewage treatment and disposal systems, as the board finds necessary and appropriate to carry out the purposes of this article. Title to all property and property rights acquired by the corporation shall be taken in the name of the corporation;

(e) To acquire any property or property rights, including patent rights, which in the opinion of the board
are necessary to carry out the purposes of this article by
purchase, lease, donation or by the exercise of the right of
eminent domain and to institute condemnation proceedings
therefor in the same manner as is provided by law for the
condemnation of real estate;
(f) To sell, lease or otherwise dispose of such personal
property as in the opinion of the board is not required for
the purposes of this article and such real property and
interests in land acquired in connection with buildings,
equipment, facilities or the construction or operation of gas
and oil pipelines, electric transmission lines, substations,
roads and facilities and other structures, waterworks
systems and waterlines, and sewer systems and sewage
treatment and disposal systems as in the opinion of the
board are not required for the purposes of this article;
(g) To negotiate and enter into such contracts,
agreements, and arrangements as it shall find necessary and
appropriate to carry out the purposes of this article;
(h) To accept appropriations, gifts, grants, bequests and
devises, and to dispose of the same to carry out its corporate
purposes;
(i) Finance, conduct or cooperate in financing or
conducting technological, business, financial or other
investigations which are related to or likely to lead to
business and economic development by making and
entering into contracts and other appropriate
arrangements, including the provision of leases, grants,
loans and other forms of assistance;
(j) To invest any funds not required for immediate
disbursement in any of the following securities:
(1) Direct obligations of or obligations guaranteed by
the United States of America;
(2) Bonds, debentures, notes or other evidences of
indebtedness issued by any of the following agencies: Banks
for cooperatives; federal intermediate credit banks; federal
home loan bank system; export-import bank of the United
States; federal land bank; the federal national mortgage
association or the government national mortgage
association;
(3) Bonds issued by public agencies or municipalities
and fully secured as to the payment of both principal and
interest by a pledge of annual contributions under an
annual contributions contract or contracts with the United
States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(4) Certificates of deposit secured by obligations of the United States of America;

(5) Direct obligations of or obligations guaranteed by the state of West Virginia;

(6) Direct and general obligations of any other state within the territorial United States; to the payment of the principal of and interest on which the full faith and credit of such state is pledged: Provided, That at the time of their purchases, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency; and

(7) Any fixed interest bond, note or debenture of any corporation organized and operating within the United States: Provided, That there exists an employment-generating plan which is satisfactory to the board; has been developed in consultation with other appropriate state agencies, including, but not limited to, the department of labor and the office of community and industrial development; focuses upon the need to increase the number of jobs available in this state; and can be carried out by the borrower: Provided, however, That the loan is needed to assist the borrower to open a new facility or expand an existing facility in this state, and that by meeting such need employment will be increased in the state; the borrower has submitted to the board a satisfactory operating plan demonstrating the ability of the borrower to generate additional payment at a level which may be maintained or increased without additional loans under the provisions of this article; the board has received such assurances as it shall require that the operating plan is realistic and feasible; the borrower has submitted to the board a satisfactory financing plan which meets the financial needs of the borrower as reflected in the operating plan for the period covered by such plan; the board has received adequate assurances regarding the availability of all financing, both public and private, contemplated by the
financing plan and that such financing is adequate to meet the borrower's projected financial needs during the period covered by the financing plan; none of the proceeds of a loan made under the provisions of this article will be used to repay credit extended or committed prior to the date the loan is made under the provisions of this article; and the financing plan submitted provides that expenditures under the financing plan will reduce unemployment in this state; 

(k) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(l) To make and publish such rules and regulations as are necessary to effectuate its corporate purpose;

(m) To borrow money to carry out and effectuate its corporate purpose and to issue notes as evidence of any such borrowing in such principal amounts and upon such terms as shall be necessary to provide sufficient funds for achieving its corporate purpose, except that no notes shall be issued to mature more than ten years from the date of issuance;

(n) To issue renewal notes, except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed;

(o) To apply the proceeds from the sale of renewal notes to the purchase, redemption or payment of the notes to be refunded; and

(p) To make proper application to the West Virginia economic development authority for the issuance of bonds, in accordance with the provisions of article fifteen, chapter thirty-one of the code.

The corporation shall have such additional powers as may be necessary or appropriate for the exercise of the powers herein conferred.

§5C-1-11. Principal office of the corporation; account books; directors' oath of office.

(a) The corporation shall maintain its principal office in the immediate vicinity of Charleston, West Virginia.

(b) The corporation shall at all times maintain complete and accurate books of accounts.

(c) Each member of the board, before entering upon the duties of his office, shall subscribe to an oath or affirmation
to support the constitution of the state of West Virginia and
to faithfully and impartially perform the duties imposed
upon him by this article.

§5C-1-13. Authority of the board of investments.

Subject to the provisions of this article, the board of
investments, on such terms and conditions as it deems
appropriate, may invest moneys, securities, and other assets
of the public employees retirement system in the form of
interest-bearing loans to a borrower, if at the time of the
commitment to make the loan, the board of investments
determines:

(1) That there exists an employment-generating plan
which:
   (A) Is satisfactory to the board of investments;
   (B) Has been developed in consultation with other
appropriate state agencies, including, but not limited to, the
department of labor and the office of community and
industrial development;
   (C) Focuses upon the need to increase the number of
jobs available in this state; and
   (D) Can be carried out by the borrower;
(2) That the loan is needed to assist the borrower to open
a new facility or expand an existing facility, in this state,
and that by meeting such need employment will be
increased in the state;
(3) That the borrower has submitted to the board of
investments a satisfactory operating plan demonstrating
the ability of the borrower to generate additional
employment at a level which may be maintained or
increased without additional loans under the provisions of
this article;
(4) That the board of investments has received such
assurances as it shall require that the operating plan is
realistic and feasible;
(5) That the borrower has submitted to the board of
investments a satisfactory financing plan which meets the
financial needs of the borrower as reflected in the operating
plan for the period covered by such plan;
(6) That the board of investments has received adequate
assurances regarding the availability of all financing, both
public and private, contemplated by the financing plan and
that such financing is adequate to meet the borrower's projected financial needs during the period covered by the financing plan;

(7) That none of the proceeds of a loan made under the provisions of this article will be used to repay credit extended or committed prior to the date the loan is made under the provisions of this article; and

(8) That the financing plan submitted under subdivision (5) of this section provides that expenditures under the 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-1-14. Conflict of interest.

§5E-1-15. Investment reporting and record keeping.

§5E-1-16. Examination.

§5E-1-17. Decertification.

§5E-1-1. Short title.

The article may be cited as the “West Virginia Capital Company Act.”

§5E-1-2. Declaration of policy.

(a) The Legislature finds and declares that:

(1) Economic insecurity due to unemployment is a serious detriment to the health, safety, and general welfare of the citizens of this state;

(2) Involuntary unemployment, with its resulting burden of indigence, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation; and
(3) Unemployment causes a migration of West Virginia workers and families seeking jobs and establishing homes elsewhere which deprives this state of its most valuable resource, its people, and reduces the tax base of this state and of its local governments, impairing their ability to provide services.

(b) The Legislature further finds that:

(1) The best method of combating unemployment and protecting West Virginia against the loss of its people is by promoting, stimulating, developing, rehabilitating and revitalizing the business prosperity and economic welfare of this state and its citizens; and

(2) To accomplish this goal, the Legislature must encourage the formation of venture and equity capital in West Virginia for use in diversifying, strengthening and stabilizing the West Virginia economy by increasing West Virginia employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(c) The Legislature also further finds that:

(1) Private investment of venture and equity capital in the West Virginia economy will be encouraged and promoted by making tax credits available to taxpayers investing in West Virginia capital companies;

(2) Demands on state revenues restrict the financial ability of this state to make unlimited tax credits available for investment purposes and require that this state place reasonable limits on the total amount of tax credits to be made available for investment incentives; and

(3) Establishment of a rational tax credit program, which gives priority to investments in capital companies in the order in which they are qualified as such, will encourage immediate investment in West Virginia businesses.

§5E-1-3. Purposes.

(a) The purpose of this article is to promote the development of the human resources and the diversification of the economy of West Virginia. The venture capital generated by this article must be used to encourage and assist the strengthening of the economy through loans, equity investments, and other business transactions for purposes of developing new business and industry in West
Virginia, rehabilitating existing business and industry, and stimulating and assisting in the expansion of business activities that promote and maintain the economic stability of this state by providing maximum opportunities for employment of West Virginians and improving the standard of living of the people of this state.

(b) This article is aimed at:

(1) Increasing the availability of development capital in order to encourage and assist in the creation, development and expansion of businesses based in West Virginia;

(2) Developing, preserving, diversifying, expanding and strengthening the agricultural, industrial and business base of West Virginia’s economy, particularly for those businesses utilizing this state’s technical, managerial and research resources in domestic and international markets; and

(3) Providing the residents of West Virginia with greater opportunities to invest and participate in the economic development and potential of this state.

§5E-1-4. Definitions.

As used in this article, the following terms shall have the meanings ascribed to them in this section, unless the context in which the term is used clearly requires another meaning or a specific different definition is provided.

(a) “Board” means the board of directors of the West Virginia industrial and trade jobs development corporation, provided for in article two, chapter five-c of this code.

(b) “Capital base” means equity capital or net worth.

(c) “Certified West Virginia capital company” means:

(1) A West Virginia business development corporation created pursuant to article fourteen, chapter thirty-one of this code; or

(2) A profit or nonprofit entity organized and existing under the laws of this state, created for the purpose of making venture or risk capital available to qualified investments, that has been certified by the board.

(d) “Qualified investment” means a debt or equity financing of a West Virginia business but only if the business is engaged in one or more of the following activities: Manufacturing; agricultural production or processing; forestry production or processing; mineral
production or processing, except for conventional oil and
gas exploration; transportation; research and development
of products or processes associated with any of the
activities previously enumerated above; tourism; and
wholesale or retail distribution activities within the state.

(e) "Qualified West Virginia capital company" means a
West Virginia capital company that has been certified by
the board as a qualified capital company under the
provisions of section six of this article.

(f) "State" means the state of West Virginia.

§5E-1-5. Rules and regulations.

The board shall promulgate rules and regulations in
accordance with article three, chapter twenty-nine-a of this
code, to carry out the purposes and to include generally the
programs available, and the procedure and eligibility of
application relating to assistance under such programs.

§5E-1-6. Certification of West Virginia capital companies.

(a) The board shall certify West Virginia capital
companies commencing after the effective date of this
article. A company seeking to be certified as a West Virginia
capital company must make written application to the
board on forms provided by the board. The application
must contain the information required by section ten of this
article. Further, the certificate must specify the level of
capitalization of the company.

(b) The application shall set forth the applicant's
purpose.

§5E-1-7. Minimum standards of qualified West Virginia
capital companies.

The board shall qualify West Virginia capital companies
as certified companies that have been capitalized at a
minimum level of one million dollars. Capitalization of the
company may be increased pursuant to regulation of the
board.

§5E-1-8. Tax credits.

(a) The total amount of tax credits authorized for a
single qualified company may not exceed two million
dollars. Capitalization of the company may be increased
pursuant to regulation of the board.
The total credits authorized by the board for all companies may not exceed a total of ten million dollars each fiscal year. The board shall allocate these credits to qualified companies in the order that said companies are certified as qualified capital companies. Any investor, including an individual, partnership or corporation who makes a capital investment in a qualified West Virginia capital company is entitled to a tax credit equal to fifty percent of the investment. This credit may be taken against any tax liability imposed pursuant to article thirteen, twenty-one or twenty-four, chapter eleven of this code until the first day of July, one thousand nine hundred eighty-six and thereafter, to articles twenty-one or twenty-four of said chapter. The credit for investments by a partnership or by a corporation electing to be treated as a Subchapter S corporation may be divided pursuant to election of partners or shareholders. The tax credit allowed under this section is to be credited against the taxpayer’s tax liability for the taxable year in which the investment in a qualified West Virginia capital company is made. If the amount of the tax credit exceeds the taxpayer’s tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or may be carried forward in accordance with the provisions of section forty-six (b) of the Internal Revenue Code of 1954, as amended. The tax credit provided for in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company occurs after the first day of July, one thousand nine hundred eighty-six.

If the amount invested by a taxpayer in a qualified West Virginia capital company is not used by the company for qualified investments, as provided in section twelve of this article, the taxpayer is not subject to a recapture provision for any credit claimed by him but the company is subject to the civil penalty provided for in subsection (c), section twelve of this article.

Each company shall make application to the board on forms provided therefor, which shall set forth:
(1) Capitalization level of capital company;
(2) Purpose of the company;
(3) Names of investors;
(4) A process for disclosing to investors the tax credit available pursuant to this article. Such disclosure shall clearly set forth that no tax credit will be available until the certification of said company shall be granted by the board and the disclosure of immunity of the state for damages is provided to said investors; and
(5) The location of the escrow account which has been established for investors for the period of time between the investment and the certification of the board of a qualified company.

§5E-1-11. Disclaimer of liability of the state.

The state of West Virginia shall not be liable to any investor or qualified capital company as a result of this article or any of the activities authorized herein by any court of law.

§5E-1-12. Qualified investments.

(a) A qualified West Virginia capital company must use its capital base to make qualified investments according to the following schedule:
(1) At least twenty percent of its capital base within the first year of the date on which the certified company was designated as qualified capital company by the board;
(2) At least forty percent of its capital base within two years of the date on which the certified company was designated as a qualified capital company by the board; and
(3) At least sixty percent of its capital base within three years of the date on which the certified company was designated as a qualified capital company by the board.
(b) The board shall annually audit the certified audit of each qualified company, as required by section sixteen of this article, and the results of said audit shall be used to notify the tax commissioner of any companies that are not in compliance with this section.
(c) A qualified West Virginia capital company that fails to make qualified investments pursuant to subsection (a) of this section shall pay to the tax commissioner a penalty equal to all of the tax credits allowed to the taxpayers
investing in said company with interest at the rate of one and one-half percent per month, compounded monthly, from the date the tax credits were certified as allocated to the qualified West Virginia capital company. The tax commissioner shall give notice to the company of any penalties under this section. The tax commissioner may abate said penalty upon written request if the capital company establishes reasonable cause for the failure to make qualified investments. The tax commissioner shall deposit any amounts received under this subsection in the state general fund.


(a) No more than thirty percent of the equity raised by a West Virginia capital company under this article may be invested in any one West Virginia business.

(b) No portion of the equity raised by a West Virginia capital company under this article shall be invested in a business that is related to that West Virginia capital company, or in any business that is owned or operated by, or employs, any officer, investor, member of the board of directors, or employee of that West Virginia capital company, or the family of such person, unless the board of directors of the West Virginia industrial and trade jobs development corporation approves, in writing, of the making of such investment. For purposes of this subsection, relationships shall be determined in accordance with the rules set forth in section 267 of the Internal Revenue Code of 1954, as amended.

§5E-1-14. Conflict of interest.

No officer, member or employee of the board shall be financially interested, directly or indirectly, in any capital company.

§5E-1-15. Investment reporting and record keeping.

(a) Each qualified West Virginia capital company shall report to the tax commissioner and the board on a semiannual basis:

(1) The name of each investor in the qualified West Virginia capital company who has applied for a tax credit;

(2) The amount of each investor’s investment;

(3) The amount of the tax credit allowed to the investor
and the date on which the investment was made; and
(4) All qualified investments the company has made.
(b) The company shall provide each investor in a
qualified West Virginia capital company with a certificate
authorizing the tax credits, and a true copy of the certificate
shall be submitted with each taxpayer's tax return
requesting a credit under section eight of this article.

§5E-1-16. Examination.

(a) Annually each certified capital company shall cause
its books and records to be audited by an independent
certified public accountant in accordance with generally
accepted auditing and accounting principles. In addition to
the performance of a financial audit, the audit shall address
the methods of operation and conduct of the business of the
West Virginia capital company to determine compliance
with this article and that the funds received by the company
have been invested within the time limits required by this
article. Upon completion, a copy of the audit report shall be
certified and sent to the board.
(b) The board may examine, under oath, any of the
officers, directors, agents, employees or investors of a West
Virginia capital company regarding the affairs and
business of the company. The board may issue subpoenas
and subpoenas duces tecum and administer oaths. Refusal
to obey such a subpoena or subpoena duces tecum may at
once be reported to the circuit court of the county in which
the company is located or the persons subpoenaed reside
and the circuit court shall enforce obedience to the
subpoena or subpoena duces tecum in the manner provided
by law for compliance with a subpoena or subpoena duces
tecum issued by a circuit court of this state.

§5E-1-17. Decertification.

(a) If the examination conducted pursuant to section
sixteen discloses that a West Virginia capital company is
not in compliance with the provisions of this article, the
board may exercise any of the powers necessary and
appropriate to protect the board's interest.
(b) The board shall give a West Virginia capital
company written notice of any inadequacies in its
compliance with the provisions of this article, and specify a
9 period of time the company has to redress such inadequacies. Failure within said time period to make corrections will result in further action by the board 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 every municipality and the county commission of every county is hereby authorized to create and establish a public agency to be known as a development authority. The name of the authority shall contain the words "development authority," together with the designation of the municipality or the county within which such authority is intended to operate. Nothing in this article contained, however, shall be construed as permitting the governing body of any municipality or county commission of any county in which there exists, on the date on which this article becomes effective, one or more public development authorities, corporations or commissions, organized and existing pursuant to an act or acts of the Legislature, either local or general, and performing substantially the same or similar functions as the development authorities herein authorized, to create and establish such a development authority until such time as all such other public
development authorities, corporations and commissions cease operations in such municipality or county: *Provided,*

That nothing herein shall be construed to prohibit the creation and establishment of a municipal development authority when a county or regional development authority exists, and any municipal development authority shall have the exclusive right to exercise its powers granted pursuant to this article within the boundaries of the municipality.

§7-12-2. Purposes.

1 The purposes for which the authority is created are to promote, develop and advance the business prosperity and economic welfare of the municipality or county for which it is created, its citizens and its industrial complex; to encourage and assist through loans, investments or other business transactions in the locating of new business and industry within the municipality or county and to rehabilitate and assist existing businesses and industries therein; to stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the economic stability of the municipality or county, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the county; to cooperate and act in conjunction with other organizations, federal, state or local, in the promotion and advancement of industrial, commercial, agricultural and recreational developments within the municipality or county; and to furnish money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity within the 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 property, operations, business and affairs shall be lodged in a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the county commission
and be known as members of the authority. One member shall be appointed by the county commission to represent it on the board. The city and town council of each municipality located within the county shall submit to the county commission the name of one representative to be appointed to the board. Other members shall be appointed by the county commission and shall include representatives of business, industry and labor. The members of the authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the appointing agency may deem proper. If a member resigns, is removed or for any other reason his membership terminates during his term of office, a successor shall be appointed by the appointing agency to fill out the remainder of his term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The appointing agency may at any time remove its appointed member of the commission by an order duly entered of record or by other action appropriate for such appointing agency and may appoint a successor member for any member so removed.

In addition to the appointing agencies hereinbefore named, such other persons, firms, unincorporated associations, and corporations, who reside, maintain offices, or have economic interests, as the case may be, in the county, shall be eligible to participate in and request the county commission to appoint members to the development 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.

The management and control of a municipal authority, its property, operations, business and affairs shall be lodged in a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the governing body and be known as members of the authority. One member of the authority shall also be a member of the governing body
appointed to represent it on the board. Other members shall be appointed by the governing body and shall include representatives of business, industry and labor. The members of the authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the appointing agency may deem proper. If a member resigns, is removed or for any other reason his membership terminates during his term of office, a successor shall be appointed by the appointing agency to fill out the remainder of his term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The appointing agency may at any time remove its appointed member of the authority by an order duly entered of record or by other action appropriate for such appointing agency and may appoint a successor member for any member so removed.

In addition to the appointing agencies hereinbefore named, such other persons, firms, unincorporated associations and corporations, who reside, maintain offices, or have economic interests, as the case may be, in the municipality, are eligible to participate in and request the governing body to appoint members to the development 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 of the county or municipality in which the authority is intended to operate, and bona fide residents of the 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 issue any obligations and give any security therefor which it may deem necessary or advisable in connection with carrying out its purposes as hereinbefore mentioned. No statutory limitation with respect to the nature, or amount, interest rate or duration of indebtedness which may be incurred by municipalities or other public bodies shall
apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the governing body of the municipality or county commission of the municipality or county in which the commission is intended to operate or any municipality situated therein, or a charge against any property of said county commission, municipalities, or other appointing agencies. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

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

The governing body of a municipality and county commission are hereby authorized and empowered to appoint members of the said authority and the county commission and any municipality therein, or any one or more of them, jointly and severally, are hereby authorized and empowered to contribute by appropriation from their respective general funds not otherwise appropriated to the cost of the operation and projects of the authority.

The county commission of the county or municipal corporations therein are hereby authorized and empowered to transfer and convey to the said authority property of any kind acquired by said county commission or municipal corporation for or adaptable to use in industrial, economic and recreational development, such transfers or conveyances to be without consideration or for such price and upon such terms and conditions as the said county commission or municipal corporation deems proper.

§7-12-12. Contributions by county commissions, municipalities and others; funds and accounts; reports; audit and examination of books, records and accounts.

Contributions may be made to the authority from time to time by the county commission of the county or any municipal corporation therein, and by any persons, firms or corporations which shall desire to do so. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall
be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a quarterly report to the county commission and municipalities containing an itemized statement of its receipts and disbursements during the preceding quarter. Within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the development authority is located. The books, records and accounts of the authority shall be subject to audit and examination by the office of the state tax commissioner of West Virginia and by any other proper public official or body in the manner provided by law.

§7-12-13. Sale or lease of property; reversion of assets upon dissolution.

In the event the board of the authority shall so determine, the authority may lease or sell all of its property and equipment on such terms and conditions as the authority may fix and determine. Upon the dissolution of the authority, all of its assets and property shall revert to and become the property of the county or municipality for which said authority was created.

§7-12-14. Employees to be covered by workers' compensation.

All employees of the authority eligible thereto are deemed to be within the workers' compensation act of West Virginia, and premiums on their compensation shall be paid by the authority as required by law.

§7-12-15. Liberal construction of article.

It is the purpose of this article to provide for promotion, development and advancement of the business prosperity and economic welfare of the municipality or county, its citizens and its industrial complex, and this article shall be liberally construed as giving to the authority full and
CHAPTER 11. TAXATION.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-30. Tax credit for coal coking facilities; regulations.

(a) Effective the first day of July, one thousand nine hundred eighty-seven, notwithstanding any provisions of this code to the contrary, any company granted a reduced rate loan pursuant to section seven, article two, chapter five-b of this code shall be allowed a credit against the tax imposed by this article for a period of five years from the date the reduced rate loan is issued.

(b) The tax commissioner may prescribe such regulations as may be necessary to carry out the purposes of this section.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-23. Tax credit for coal coking facilities; regulations.

(a) Effective the first day of July, one thousand nine hundred eighty-seven, notwithstanding any provisions of this code to the contrary, any company granted a reduced rate loan pursuant to section seven, article two, chapter five-b of this code shall be allowed a credit against the tax imposed by this article for a period of five years from the date the reduced rate loan is issued.

(b) The tax commissioner may prescribe such regulations as may be necessary to carry out the purposes of this section.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-24. Tax credit for coal coking facilities; regulations.

(a) Effective the first day of July, one thousand nine hundred eighty-seven, notwithstanding any provisions of this code to the contrary, any company granted a reduced rate loan pursuant to section seven, article two, chapter
five-b of this code shall be allowed a credit against the tax imposed by this article for a period of five years from the date the reduced rate loan is issued.

(b) The tax commissioner may prescribe such regulations as may be necessary to carry out the purposes of this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-22. Tax credit for coal coking facilities; regulations.

(a) Effective the first day of July, one thousand nine hundred eighty-seven, notwithstanding any provisions of this code to the contrary, any company granted a reduced rate loan pursuant to section seven, article two, chapter five-b of this code shall be allowed a credit against the tax imposed by this article for a period of five years from the date the reduced rate loan is issued.

(b) The tax commissioner may prescribe such regulations as may be necessary to carry out the purposes of 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.

(a) There is hereby created as an independent entity the institute for public affairs, to be located and operated at West Virginia University. The institute shall be under the control and supervision of a director, which position is to be filled by an individual, whose credentials include accomplishments in the interdisciplinary academic fields together with that of government. The director shall be appointed by the president of West Virginia University. The institute shall engage faculty from institutions of higher
learning throughout the state and shall cooperatively develop a program with other such institutions. The terms of such participation may be by contract, loan, part-time basis or other such arrangement.

(b) The institute is directed to conduct independent research and propose strategies and options on public issues and policies upon its own initiative or as may be requested by the executive or the Legislature.

(c) The institute is directed to establish priorities and coordinate its public policy initiatives with the governor and with the Legislature. To accomplish this purpose, there is hereby created an advisory board to consist of four members of the Legislature, two of whom shall be members of the House of Delegates to be appointed by the Speaker and two of whom shall be members of the Senate to be appointed by the President; and four members of the executive to be appointed by the governor. The director shall serve as the chairman of the advisory board.

(d) The institute is directed to seek all other funds, grants, and other sources of assistance from other agencies of government as well as the private sector.

§18-26C-2. Director's administrative control and supervision.

The director shall have administrative control and supervision of the institute.

ARTICLE 26D. INSTITUTE FOR INTERNATIONAL TRADE DEVELOPMENT.

§18-26D-1. Institute for international trade development; creation and purpose.

There is hereby created as an independent entity the institute for international trade development, to be located and operated at Marshall University. The institute is established to facilitate faculty involvement in the formation and continuation of international market entry and development strategy, to provide assistance to state businesses in exporting and attracting foreign investment, and to engage in other activities designed to promote, develop and stimulate export expansion and foreign direct investment. The institute shall be under the control and supervision of a director, who shall be appointed from among the faculty by the president of Marshall University.
The institute shall engage faculty from institutions of higher learning throughout the state and shall cooperatively develop an export program with the other such institutions. The terms of such participation may be by contract, loan, part-time basis, or other such arrangement. The institute shall develop with the board of regents and the governor a program of student internships in international business to place qualified students for academic credit with businesses in West Virginia to help develop export awareness and potential. The institute shall further provide research and analysis on matters of international trade upon request of the executive or the Legislature, and shall initiate partnership grants, and proposals in the area of international trade in accordance with the provisions of article two-a, chapter five-b; and apply for and obtain grants or funds from all available sources, private and 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.

(a) The civil service system shall develop and monitor apprenticeship programs for all state agencies that have employees working in apprenticeable trades which are, or may be recognized by, the United States department of labor, bureau of apprenticeship and training.

(b) These apprenticeship programs will be developed and conducted in a manner that will assure meeting the national minimum requirements of quality and be registered with the United States department of labor, bureau of apprenticeship and training.

(c) The director of the civil service commission, or his designee, in cooperation with the participating appointing authorities within each agency, shall develop and annually revise by the thirty-first day of December a list of employment classifications appropriate for apprenticeship training, which may include, but not be limited to, the following classifications: Computer service technicians;
(d) The chief administrative officer of each agency in cooperation with the director of the civil service commission, or his designee, shall establish procedures for the coordination of apprenticeship programs developed in accordance with this section.

(e) Subject to the approval of the director of the civil service commission and the procedures established, each participating agency shall determine the location and positions in which apprenticeships are to be established.

(f) The director, or his designee, shall make an annual report to the Legislature and shall include in such report the following:

1. A review of the development and operation of apprenticeship programs;
2. The current list of apprenticeable classifications;
3. A summary of the agencies and types of positions involved;
4. A summary of registered apprenticeships;
5. The number of persons who applied for apprenticeship positions under this section;
6. The number of persons accepted into the apprenticeship programs established in accordance with this section;
7. The number of persons who successfully completed and received a certificate of completion from the United States department of labor, bureau of apprenticeship and training;
8. The number of persons who failed to complete apprenticeships in accordance with this section;
9. The number of persons who remain employed after successfully completing apprenticeships; and
10. A summary of characteristics of applicants and
participants in the program deemed pertinent to the
director of the civil service commission.
(g) The recruitment, selection and training of
apprentices during their apprenticeship shall be without
discrimination because of race, color, religion, national
origin or sex. The commission will take affirmative action
to provide equal opportunity in apprenticeship programs
and will operate the program to assure equal employment in
apprenticeship.
(h) The director, or his designee, shall file a report on the
development of apprenticeship programs with the
governor and the Legislature on or before the first day of January,
one thousand nine hundred eighty-seven.
(i) No contract between the state and a vendor, whereby
persons who have participated in the apprenticeship
program are to be hired, may be approved by the attorney
general unless and until said contract contains a statement
that the vendor will not discriminate in employment or
public accommodation because of race, religion, color,
national origin, ancestry, sex, age, blindness or handicap of
any individual.
§29-6-17b. Advisory board for the apprenticeship program.

In order to better accomplish the goals of this program
an apprenticeship advisory board is established. Its
members shall include the commissioner of labor or a
designee, the commissioner of finance and administration
or a designee, the state superintendent of the department of
education or a designee, two employees of the state who are
covered under the civil service system, and one private
citizen, with the employee and citizen members to be
appointed by the governor. The employees and the private
citizen members shall serve without compensation for two
years, after which they may be reappointed.
The commissioner of labor shall call the first meeting of
the advisory board within three months of the effective date
for this program. At this meeting the chairman of the board
shall be elected by the board as a whole.
The advisory board shall meet at least semiannually, at
the call of the chairman, for the purpose of receiving,
reviewing and evaluating reports from the director of the
civil service commission on the achievements and
The board may seek the advice and counsel from appropriate members of the United States department of labor who may be knowledgeable about such apprenticeship programs. The board may also prepare written recommendations to the governor on ways to 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.


§31-15-7. 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.


§31-15-23. Governing body; organization and meeting; quorum; powers.


The authority, as a public corporation and governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purposes of this article, including the power:

(a) To cooperate with industrial development agencies in efforts to promote the expansion of industrial, commercial, manufacturing and tourist activity in this state.

(b) To determine, upon the proper application of an industrial development agency, whether the declared public purposes of this article have been or will be accomplished by the establishment by such agency of an industrial development project in this state.

(c) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter relevant to this
article and necessary for information on the establishment
of any industrial development project.

(d) To issue subpoenas requiring the attendance of
witnesses and the production of books and papers relevant
to any hearing before such authority or one or more
members appointed by it to conduct any hearing.

(e) To apply to the circuit court having venue of such
offense to have punished for contempt any witness who
refuses to obey a subpoena, to be sworn or affirmed or to
testify or who commits any contempt after being summoned
to appear.

(f) To authorize any member of the authority to conduct
hearings, administer oaths, take affidavits and issue
subpoenas.

(g) To make, upon proper application of any industrial
development agency, loans to such agency for industrial
development projects, industrial subdivision projects and
industrial subdivision project improvements and to provide
for the repayment and redeposit of such loans in the manner
provided in this article.

(h) To sue and be sued, implead and be impleaded, and
complain and defend in any court.

(i) To adopt, use and alter at will a corporate seal.

(j) To make bylaws for the management and regulation
of its affairs.

(k) To appoint officers, agents, employees and servants.

(l) To make contracts of every kind and nature to
execute all instruments necessary or convenient for
carrying on its business.

(m) Without in any way limiting any other subdivision
of this section, to accept grants from and enter into
contracts and other transactions with any federal agency.

(n) To take title by foreclosure to any industrial
development project or any industrial subdivision project
where acquisition is necessary to protect any loan
previously made by the authority and to sell, transfer and
convey such project to any responsible buyer. In the event
such sale, transfer and conveyance cannot be effected with
reasonable promptness, the authority may, in order to
minimize financial losses and sustain employment, lease
the project to a responsible tenant. The authority shall not
lease an industrial development project or industrial
subdivision project, except under the conditions and for the purposes cited in this section.

(o) To participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any questions pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(p) To borrow money and to issue its negotiable bonds, security interests or notes and to provide for and secure the payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold and dispose of any of its bonds, security interests or notes.

(q) To sell, at public or private sale, any bond or other negotiable instrument, security interests or obligation of the authority in such manner and upon such terms as the authority deems would best serve the purposes of this article.

(r) To issue its bonds, security interests and notes payable solely from the revenues or funds available to the authority therefor; and the authority may issue its bonds, security interests or notes in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including:

(i) The making of loans to approved industrial development agencies.

(ii) The payment, funding or refunding of the principal of, interest on, or redemption premiums on, any bonds, security interests or notes issued by it whether the bonds, security interests, notes or interest to be funded or refunded...
have or have not become due.

(iii) The establishment or increase of reserves to secure or to pay bonds, security interests, notes or the interest thereon and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Any bonds, security interests or notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the authority from any source whatsoever.

(s) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed and no such refunding bonds shall be issued to mature more than twenty-five years from the date of issuance.

(t) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds to the purchase, redemption or payment of the notes, security interests or bonds to be refunded.

(u) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

(v) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interests, note or contract or agreement of any kind to which the authority is a party.

(w) To sell security interests in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be issued in the same manner and
for the same purposes as bond and note revenues.
(x) To procure insurance against any losses in
connection with its property, operations or assets in such
amounts and from such insurers as the authority deems
desirable.
(y) To take and hold security interests for equipment
loans as prescribed in this article.
(z) To make, upon proper application, loans for the
purposes and under the conditions provided in this article,
for electrical power generating facilities, natural gas
transmission lines, coal processing plants, other energy
projects, export development, farm development, job
development, forest development, and for industry
assistance corporation projects, and the industrial and
trade jobs development corporation projects, and to
provide for the repayment and redeposit of such loans in the
manner provided in this article: Provided, That no bonds
shall be issued for the constructing of electrical power
generating facilities, natural gas transmission lines or other
energy projects unless the same shall be specifically
provided for by an act of general law, after public notice
and public hearing.
(aa) To take title by foreclosure to any project, plant,
property or equipment where acquisition is necessary to
protect any loan previously made by the authority and to
sell, transfer and convey such project, plant, property or
equipment to any responsible buyer. In the event such sale,
transfer and conveyance cannot be effected with reasonable
promptness, the authority may in order to minimize
financial losses and sustain employment, lease a project to a
responsible tenant.
(bb) To borrow money for its purpose and issue bonds or
notes for the money and provide for the rights of the holders
of the bonds or notes, to secure the bonds or notes by a deed
of trust on, or an assignment or pledge of, any or all of its
property and property of the project, including any part of
the security for the project loans, and the authority may
issue its bonds and notes in such principal amounts as it
shall deem necessary to provide funds for any purposes
under this article, including the making of loans for the
purposes set forth in subdivision (z) of this section.
§31-15-7. Loans to industrial development agencies for industrial development projects.

When it has determined upon application of an industrial development agency and upon hearing in the manner hereinafter provided that establishment or acquisition of a particular industrial development project has accomplished or will accomplish the public purposes of this article, the authority may contract to loan such agency up to one hundred percent of the estimated cost of such project when financed by bonds issued by the authority, or the authority may contract to loan such agency an amount not in excess of fifty percent of the cost or estimated cost of such project, as established, to be established or proposed to be acquired, when the project is not financed by bonds issued by the authority, subject to the following conditions:

(a) The West Virginia economic development authority shall make every reasonable effort to ensure that West Virginia firms and West Virginia workers are used in such projects.

(b) The authority shall determine that the industrial development agency has obtained from other independent and responsible sources, such as banks and insurance companies, a firm commitment for all other funds over and above the loan of the authority and such funds or property as the agency may hold, necessary for payment of all the estimated cost of establishing or acquiring the industrial development project and that the sum of all these funds is adequate to ensure completion and operation of the industrial development project. The proceeds of any loan made by the authority to the industrial development agency pursuant to this subdivision (b) shall be used only for the establishment or acquisition of industrial development projects in furtherance of the public purposes of this article.

(c) The loan of the authority shall be for such period of time and shall bear interest at such rate as the authority determines and it shall be secured by the negotiable promissory note of the industrial development agency and by deed of trust on the industrial development project for which the loan was made or by assignment of any deed of trust and negotiable promissory note and other security taken by the industrial development agency on the industrial development project, such deed of trust and note,
assignment of deed of trust and note and other security to be second and subordinate only to the deed of trust securing the first lien obligation issued to secure the commitment of funds from the independent and responsible sources and used in the financing of the industrial development project. Money loaned by the authority to an industrial development agency shall be withdrawn from the fund and paid over to the agency in such manner as is provided by rules and regulations of the authority. The authority shall deposit all payments of interest on loans and the principal thereof in the fund.

Where any federal agency participating in the financing of an industrial development project is not permitted to take as security for such participation a deed of trust or assignment of deed of trust and other security the lien of which is junior to the deed of trust or assignment of deed of trust and other security of the authority, the authority may take as security for its loan to the industrial development agency a deed of trust or assignment of deed of trust and other security junior in lien to that of the federal agency.

*§31-15-7b. 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.

(a) At the request of the governor or the appropriate state agency or authority, the authority may lend money to such office, agency or authority for the acquisition, construction, improvement or alteration of projects for electrical power generating facilities, natural gas transmission lines, coal processing plants and other energy projects.

(b) At the request of the department of commerce or the office of community and industrial development, the authority may lend money to any person or entity for the acquisition, construction, improvement or alteration of any project relative to export development, farm development, job development and forest development.

(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.
assistance corporation, the authority may lend money to any person or entity for the acquisition, construction, improvement or alteration of any project relative thereto.

(d) At the request of the West Virginia industrial and trade jobs development corporation, the authority may lend money to any person or entity for the acquisition, construction, improvement or alteration of any project relative thereto.

(e) A loan shall not be made unless the authority is reasonably satisfied that the project will produce revenues sufficient, together with any other revenues pledged, to meet the principal and interest on the loan, other costs, expenses and charges in connection with the loan and other charges or obligations of the project which may be prior or equal to the loan, promptly as they become due; that the project is otherwise soundly financed; that the loan application requirements of section eight of this article have been satisfied; that the project will be owned and operated by the state of West Virginia. A loan made pursuant to this subsection shall not exceed the project costs as determined by the authority. A loan shall be secured in the manner required by the authority, shall be repaid in a period and bear interest at a rate as determined by the authority, which interest rate may be decreased or increased so that it shall in no event be less than the rate paid by the authority on notes, renewal notes or bonds issued to fund the loan, and shall have such terms and conditions as are required by the authority, all which shall be set forth in a loan agreement and related documents as required by the authority.

§31-15-8. Loan application requirements; hearings.

Prior to the loaning of any funds to an industrial development agency for an industrial development project or for an industrial subdivision project acquisition or improvement, the authority shall receive from such agency a loan application in such form as adopted by the authority.

(1) If the loan application is for an industrial development project, the form shall contain at least the following:

(a) A general description of the project and a general description of the industrial, commercial, manufacturing or
tourist enterprise for which the project has been or will be established.

(b) A legally sufficient description of all real estate necessary for the project.

(c) Such plans and other documents as may be required to show the type, structure and general character of the project.

(d) A general description of the type, classes and number of employees employed or to be employed in the operation of the project.

(e) Cost or estimates of cost of establishing the project.

(f) A general description and statement of value of any property, real or personal, of the industrial development agency applied or to be applied to the establishment of the project.

(g) Evidence of the arrangement made by the industrial development agency for the financing of all costs of the project.

(h) A general description of the responsible tenant to which the industrial development agency has leased or will lease the project or of the responsible buyer to which the agency has sold or will sell the project.

(i) A general description of the form of lease or sales agreement entered into or to be entered into between the industrial development agency and its responsible tenant or responsible buyer.

(j) Evidence that the establishment of the project will not cause the removal of an industrial, commercial, manufacturing or tourist facility from one area of the state to another area of the state.

(2) If the loan application is for an industrial subdivision project acquisition or improvement, the form shall contain at least the following:

(a) A general description of the industrial subdivision project and a general description of its adaptability to industrial, commercial, manufacturing or tourist purposes, including the type of industrial development project which may be established thereon upon completion of the acquisition or improvement for which the loan is requested.

(b) A legally sufficient description of the industrial subdivision project.

(c) Such plans and other documents as may be required
to show the type, structure and general character of the proposed industrial subdivision project acquisition or improvement.

(d) Cost or estimates of cost of the proposed industrial subdivision project acquisition or improvement.


1 The authority may make loans for equipment as part of the industrial development projects, industrial subdivision projects, and projects for electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects, export development, farm development, job development, forest development, industry assistance corporation projects and industrial and trade jobs development corporation projects, and improvements thereto, subject to the same application, loan and bond procedures and provision as usually apply to loans issued under the provisions of this article, or by an unconditional letter of credit approved by the authority. The real property in which a security interest is taken may be the real property upon which the equipment is situate or real property at a different location from the location of the equipment. Such additional security shall be upon such 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 members of the authority acting as a board, which shall exercise all the powers given to the authority in this article. The governor or his designated representative shall be chairman of the board and its chief executive officer. On the second Wednesday of July of each year, the board shall meet to elect a secretary and a treasurer from among its own members.

A majority of the members shall constitute a quorum for the purpose of conducting business. Except in the case of a loan application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan application shall be made by majority vote of the full membership of the board.
The board shall manage the property and business of the authority and prescribe, amend and repeal bylaws and rules and regulations governing the manner in which the business of the authority is conducted.

The governor shall provide staff services to the authority for administration of this article, including liaison between the authority and the industrial development agencies and related organizations and between the authority and other state agencies whose facilities and services may be useful to the authority in its work. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.

The authority shall employ an executive director and any other personnel it determines necessary, and may appoint its own counsel and legal staff, and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey 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.

(a) The West Virginia economic development authority may use for any investments authorized by sections seven and seven-a, article fifteen, chapter thirty-one of this code, up to one half of the funds of the state mortgage and industrial development investment pool: Provided, That the economic development authority shall deposit with the treasurer of the state for the credit of the state mortgage and industrial development pool such notes, security interests or bonds issued by the economic development authority evidencing the indebtedness of the authority to the pool.

(b) Such notes, security interests or bonds issued by the authority shall be secured by security equal to or better than one of the three highest rating grades by an agency which is nationally known in the field of rating corporate 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.

§31-19-2. Legislative findings and purposes.
§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 responsi-
bilities 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.
§31-19-10. 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.
§31-19-17. Exemption from taxation.
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
in the discharge of the responsibilities of the aforesaid, that
a state instrumentality be created as a public body
corporate with full powers to borrow money and issue its
bonds and notes to the end that funds obtained thereby may
be used for the purchase by such state instrumentality of the
bonds or notes of counties and municipalities or for the
purposes of making loans to the counties or municipalities
for community infrastructure projects, and that such state
instrumentality be granted all powers necessary or
appropriate to accomplish and carry out the aforesaid
public purposes and responsibilities of the state of West
Virginia in a manner to make it possible for counties or
municipalities to sell their bonds and borrow funds at as
low an interest rate as said instrumentality finds and
determines to be feasible.

(e) The Legislature further finds and declares that in
accomplishing these purposes, the West Virginia
community infrastructure authority, created and
established by this article, will be acting in all respects for
the benefit of the people of the state of West Virginia to
serve the public purposes of improving and otherwise
promoting their health, education, welfare, safety and
prosperity, and that the West Virginia community
infrastructure authority, so created and established, is
hereby empowered to act on behalf of the state of West
Virginia and its people in serving the aforesaid public
purposes for the benefit of the general public of said state.


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
intents and purposes of this article.

(4) "Community infrastructure project" or "project" means any project of a public nature which is considered a part of the infrastructure of a county or municipality, including, but not limited to, roads and other appurtenances to community or economic development, which are specifically declared to be for a public purpose.

(5) "Cost" means, as applied to community infrastructure projects, the cost of acquisition, repair, renovation and construction thereof; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required by the county or municipality for such acquisition, renovation, repair or construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of diverting highways, interchange of highways, access roads to private property, including the cost of land or easement therefor; the cost of all machinery, furnishing, and equipment; all finance charges, and interest prior to and during the construction and for no more than eighteen months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, renovating, repairing or constructing any such project; the financing of such acquisition, renovation, or repair or construction, including the amount authorized in the resolution of the authority providing for the issuance of community infrastructure revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation, if necessary. Any obligations or expenses incurred after the effective date of this article by any county or municipality, with the approval of the authority, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition, renovation, repair or construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed out of the proceeds of grants, loans or community infrastructure revenue bonds as authorized by
the provisions of this article.

(6) "Department" means the governor's office of community and industrial development.

(7) "Revenue" means any money or thing of value collected by, or paid to, the West Virginia community infrastructure authority in connection with any community infrastructure project or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the West Virginia community infrastructure authority to counties or municipalities to finance in whole or in part the acquisition, renovation, repair or construction of any community infrastructure project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this 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.

(a) There is hereby created the West Virginia community infrastructure authority. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties shall be deemed and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by the five member board known as the West Virginia community infrastructure board, which is hereby created. The director of the governor's office of community and industrial development, or his designee, the director of the department of natural resources, or his designee, and the commissioner of the department highways, or his designee, shall be members ex officio of the board. The director of the governor's office of community and industrial development, or his designee, shall be the ex officio chairman. Two members of the board shall be representative of the general public, one of which shall have
had experience or a demonstrated interest in local
government. The two members who are not ex officio
members of the board shall be appointed by the governor,
by and with the advice and consent of the Senate, for initial
terms of three and six years, respectively. The successor of
each such appointed member shall be appointed for a term
of six years in the same manner as the original
appointments were made, except that any person appointed
to fill a vacancy occurring prior to the expiration of the term
for which his predecessor was appointed shall be appointed
only for the remainder of such term. Each board member
shall serve until the appointment and qualification of his
successor. The two appointed board members shall not at
any one time belong to the same political party. Appointed
board members may be reappointed to serve additional
terms, not to exceed two consecutive full terms. All
members of the board shall be citizens of the state. Each
appointed member of the board, before entering upon his
duties, shall comply with the requirements of article one,
chapter six of this code and give bond in the sum of twenty
thousand dollars in the manner provided in article two,
chapter six of this code. The governor may remove any
board member for cause as provided in article six, chapter
six of this code.

Annually the board shall elect one of its appointed
members as vice chairman, and shall appoint a secretary-
treasurer, who need not be a member of the board. Three
members of the board shall constitute a quorum and the
affirmative vote of three members shall be necessary for any
action taken by vote of the board. No vacancy in the
membership of the board shall impair the rights of a
quorum by such vote to exercise all the rights and perform
all the duties of the board and the authority. The person
appointed as secretary-treasurer, including a board
member if he is so appointed, shall give bond in the sum of
fifty thousand dollars in the manner provided in article two,
chapter six of this code.

The director of the governor's office of community and
industrial development or his designee, the director of the
department of natural resources or his designee, and the
commissioner of the department of highways or his
designee, shall not receive any compensation for serving as
board members. Each of the two appointed board members
of the board shall receive an annual salary of five thousand dollars, payable in monthly installments. Each of the five board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of such board. All such expenses incurred by the board shall be payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent for which moneys are available from funds of the authority or from such appropriations.

(b) There shall be a director of the authority appointed by the board who shall supervise and manage the community infrastructure authority, and the governor's office of community and industrial development shall serve as the staff for the authority. Except as otherwise provided in this section, the duties and responsibilities of the director and of the staff shall be established by the authority. At the board's discretion, it may provide for the position of general counsel, who shall be an employee of the authority, or for the appointment of special counsel. As the board deems necessary and desirable, it may at any time elect to change its decision on the employment or appointment of a counsel.

(c) The director, or his designee, may employ or appoint any staff members in addition to those provided by the governor's office of community and industrial development, including general or special counsel if the position is established by the board. The number of employees needed, the positions to be filled and their salaries or wages shall be determined by the director with the approval of the board, unless the board elects to not require its approval. At any time the board may elect to change its decision concerning approval of additional staff hiring and salaries.

(d) The board shall meet at least quarterly, and more often as it deems necessary. The director and any other staff member or members as the director deems expedient shall 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.
To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the West Virginia community infrastructure authority may make loans to counties and municipalities for the acquisition, renovation, repair or construction of community infrastructure projects by such counties and municipalities, and may issue community infrastructure revenue bonds of this state, payable solely from revenues, to pay the cost of, or finance, in whole or in part, by loans to counties and municipalities, such projects. A community infrastructure project shall not be undertaken unless it has been determined by the authority based upon information provided to it by the county or municipality or other agency charged by law with the responsibility of reporting to be consistent with any applicable requirements of law. Any resolution of the authority providing for making a loan or bond purchase pursuant to this article shall include a finding by the authority that such determinations have been made. A loan or bond purchase agreement shall be entered into between the authority and each county or municipality to which a loan is made or from which bonds are purchased for the acquisition, renovation, repair or construction of a community infrastructure project, which loan or bond purchase agreement shall include without limitation the following provisions:

1. The cost of such project, the amount of the loan or bond purchase, the terms of repayment of such loan or bond purchase and the security therefor;
2. The specific purposes for which the proceeds of the loan or bond purchase shall be expended, the procedures as to the disbursements of loan or bond purchase proceeds and the duties and obligations imposed upon the county or municipality in regard to the construction, renovation, repair or acquisition of the project;
3. The agreement of the county or municipality to raise the funds for repayment, through levy, pursuant to an election pursuant to article one, chapter thirteen of this code; and
4. The agreement of the county or the municipality to comply with all applicable laws, rules and regulations issued by the authority or other state, federal or local bodies in regard to the construction, repair, renovation or
§31-19-6. Powers, duties and responsibilities of the authority generally.

1 The West Virginia community infrastructure authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority shall have the power and capacity to:

2 (1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules and regulations to implement and make effective its powers and duties, such rules and regulations to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

3 (2) Adopt an official seal.

4 (3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

5 (4) Sue and be sued in its own name and plead and be impleaded in its own name, particularly to enforce the obligations and covenants made under sections seven and eight of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County, in which the principal office of the authority shall be located.

6 (5) Establish and operate a revolving loan fund for the purpose of making loans to counties and municipalities for the acquisition, renovation, repair or construction of community infrastructure projects by such counties or municipalities; purchase the bonds of counties and municipalities issued for the acquisition, renovation, repair or construction of community infrastructure projects by such county or municipality; and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules and procedures for making such loans or purchasing such bonds.

7 (6) Issue community infrastructure revenue bonds and notes and community infrastructure revenue refunding bonds of the state, payable as provided in section seven of this article unless the bonds are refunded by refunding bonds, for the purpose of making loans to or bond purchases from counties or municipalities for one or more community
(7) Acquire by gift or purchase, hold or dispose of real and personal property in the exercise of its powers and performance of its duties as set forth in this article.

(8) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers.

(9) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction, repair, renovation or acquisition of community infrastructure projects, and receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(10) Purchase property coverage and liability insurance for any community infrastructure project and for any offices of the authority, insurance protecting the authority and its officers and employees against liability, if any, or damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of community infrastructure revenue bonds or in any trust agreement securing the same.

(11) Establish or increase reserves from moneys received or to be received by the authority to secure or pay the principal of and interest on bonds and notes issued by the authority pursuant to this article or other law.

(12) Receive and disburse the proceeds of such general obligation bonds of the state as may be allowed by law pursuant to any resolution or act of the Legislature.

(13) To the extent permitted under its contracts with the holders of bonds or notes of the authority, consent to modification of the rate of interest, time and payment of installment of principal or interest, security, or any other term of a bond or note, contract or agreement of any kind to which the authority is a party.

(14) Make grants to counties or municipalities for one or more community infrastructure projects or parts thereof.

(15) Provide consultation services to municipalities or counties in connection with the acquisition, renovation, repair or construction of any community infrastructure project.
(16) Establish and amend the criteria and qualifications for the making of any loan to or the purchasing of any bond from a county or municipality and the terms not inconsistent with this article of any loan or bond purchase agreement with any county or municipality.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

§31-19-7. Authority empowered to issue community infrastructure revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

The authority is hereby empowered to issue from time to time community infrastructure revenue bonds and notes of the state in such principal amounts as the authority deems necessary to make loans to or bond purchases from counties and municipalities for one or more community infrastructure projects.

The authority may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of community infrastructure revenue refunding bonds by the state pursuant to the provisions of section sixteen of this article. Except as may otherwise be expressly provided in this article or by the authority, every issue of its bonds or notes shall be obligations of the authority payable out of the revenues and reserves created for such purposes by the authority which are expressly pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues.

Such pledge shall be valid and binding from the time the pledge is made and the revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof.

All such bonds and notes shall have and are hereby declared to have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution of
the authority, shall bear such date and shall mature at such
time, in case of any such note or any renewal thereof not
exceeding five years from the date of issue of such original
note, and in the case of any such bond not exceeding fifty
years from the date of issue, as such resolution may provide.
The bonds and notes shall bear interest at such rate or rates,
including variable rates, be in such denominations, be in
such form, either coupon or registered, carry such
registration privileges, be payable in such medium of
payment, in such place and be subject to such terms of
redemption as the authority may authorize. The bonds and
notes of the authority may be sold by the authority at public
or private sale, at or not less than the price the authority
determines. The bonds and notes shall be executed by the
chairman of the authority who may use a facsimile
signature. The official seal of the authority or a facsimile
shall be affixed thereto or printed thereon and attested,
manually or by facsimile signature by the secretary-
treasurer of the authority, and any coupons attached
thereto shall bear the signature or facsimile signature of the
chairman of the authority. In case any officer whose
signature, or a facsimile of whose signature appears on any
bonds, notes or coupons ceases to be such officer before
delivery of such bonds or notes, such signature or facsimile
is nevertheless sufficient for all purposes the same as if he
had remained in office until such delivery and in case the
seal of the authority has been changed after a facsimile has
been imprinted on such bonds or notes, such facsimile will
continue to be sufficient for all purposes.

Any resolution authorizing any bonds or notes or any
issue thereof may contain provisions (subject to such
agreements with bondholders or noteholders as may then
exist, which provisions shall be a part of the contract with
the holders thereof) as to pledging all or any part of the
revenues of the authority to secure the payment of the bonds
or notes or of any issue thereof; the use and disposition of
revenues of the authority; the setting aside of reserve funds,
sinking funds or replacement and improvement funds and
the regulation and disposition thereof; the crediting of the
proceeds of the sale of bonds or notes to and among the
funds referred to and provided for in the resolution
authorizing the issuance of the bonds or notes; the use,
lease, sale or other disposition of any assets of the authority;
limitations on the purpose to which the proceeds of sale of bonds or notes may be applied; notes issued in anticipation of the issuance of bonds; the agreement of authority to do all things necessary for the authorization, issuance and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; limitation on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated; the amount of bonds or notes the holders of which must consent thereto and the manner in which such consent may be given; limitations on the amount of moneys to be expended by the authority for operating, administrative or other expenses of the authority securing any bonds or notes by a trust agreement; and any other matter, of like or different character, which in any way affects the security or protection of the bonds or notes.

In the event that the sum of all reserves pledged to the payment of such bonds or notes shall be less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of such bonds or notes, the chairman of the authority shall certify, on or before the first day of December of each year, the amount of such deficiency to the governor of the state for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the authority to be pledged for payment of such bonds or notes: Provided, That the Legislature shall not be required to make any appropriations so requested, and the amount of such deficiencies shall not constitute a debt or liability of the state.

Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

§31-19-8. Trustee for bondholders; contents of trust agreement.

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
acquisition of a community infrastructure project.


Any holder of community infrastructure revenue bonds issued pursuant to this article or any of the coupons appertaining thereto and the trustee under any trust agreement, except the extent the rights given by this article may be restricted by the applicable resolution or such trust agreement, may by civil action, mandamus or other proceedings protect and enforce any rights granted under the laws of the state or granted under this article by the trust agreement or by the resolution in the issuance of such bonds, and may enforce and compel the performance of all duties required by this article, pursuant to the trust agreement or resolution, to be performed by the authority or any officer thereof.

§31-19-10. Bonds and notes not debt of state, county, or municipality; expenses incurred pursuant to article.

Community infrastructure revenue bonds and notes and community infrastructure revenue refunding bonds issued pursuant to this article and any coupons in connection therewith shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county or municipality of the state and the holders or owners thereof shall have no right to have taxes levied by the Legislature or taxing authority of any county or municipality for the payment of the principal thereof or interest thereon, but such bonds and notes shall be payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued pursuant to this article which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county or municipality thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in the carrying out of the provisions...
of this article shall be payable solely from funds provided
under the authority of this article. Such article does not
authorize the authority to incur indebtedness or liability on
behalf of or payable by the state or any county or
municipality thereof.

§31-19-11. Use of funds by authority; restrictions thereon.
1 All moneys, properties and assets acquired by the
authority whether as proceeds from the sale of community
infrastructure revenue bonds or as revenues or otherwise,
shall be held by it in trust for the purposes of carrying out its
powers and duties, and shall be used and reused in
accordance with the purposes and provisions of this article.
Such moneys shall at no time be commingled with other
public funds. Such moneys, except as otherwise provided in
any resolution authorizing the issuance of community
infrastructure revenue bonds or in any trust agreement
securing the same, or except when invested pursuant to
section twelve of this article, shall be kept in appropriate
depositories and secured as provided and required by law.
The resolution authorizing the issuance of such bonds of
any issue or of the trust agreement securing such bonds
shall provide that any officer to whom, or any banking
institution or trust company to which, such moneys are paid
shall act as trustee of such moneys and hold and apply them
for the purposes hereof, subject to the conditions this article
and such resolution or trust agreement provide.

§31-19-12. Investment of funds by authority.
1 Except as otherwise provided in any resolution
authorizing the issuance of community infrastructure
revenue bonds or in any trust agreement securing the same,
the authority is hereby authorized and empowered to invest
any funds not needed for immediate disbursement in any of
the following securities:
(1) Direct obligations of or obligations guaranteed by
the United States of America;
(2) Bonds, debentures, notes or other evidences of
indebtedness issued by any of the following agencies: Banks
for cooperatives; federal intermediate credit banks; federal
home loan bank system; Export-Import Bank of the United
States; federal land banks; the Federal National Mort-
gage Association or the Government National Mortgage Association;
(3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with United States of America;
(4) Certificates of deposit secured by obligations of the United States of America;
(5) Direct obligations of or obligations guaranteed by the state of West Virginia;
(6) Direct and general obligations of any other state within the territorial United States, to the payment of the principal of and interest of which the full faith and credit of such state is pledged: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by nationally recognized bond-rating agencies; and
(7) Any fixed interest bond, note or debenture of any corporation organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: Provided, however, That (i) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, (ii) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (iii) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dun & Bradstreet or Moody's.

As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for
the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants. The cost of such audit shall be treated as a part of the cost of operation of the authority.


The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, all community infrastructure revenue bonds issued pursuant to this article shall be lawful investments for the West Virginia state board of investments and shall also be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies.

§31-19-15. Purchase and cancellation of notes or bonds.

The authority, subject to such agreements with noteholders or bondholders as may then exist, shall have power, out of any funds available therefor, to purchase notes or bonds of the authority. If the notes or bonds are then redeemable, the price of such purchase shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date thereon. If the notes or bonds are not then redeemable, the price of such purchase shall not exceed the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date. Upon such purchase such notes or bonds shall be cancelled.


Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as it may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid
interest thereon; to provide additional funds for the purpose of the authority; and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued pursuant to this article shall be payable from the revenues out of which the bonds to be refunded thereby were payable, or from other moneys or the principal of and interest on or other investment yield from, investments or proceeds of bonds or other applicable funds or moneys, including investments of proceeds of any refunding bonds, and shall be subject to the provisions contained in section seven of this article and shall be secured in accordance with the provisions of sections seven and eight of this article.

§31-19-17. Exemption from taxation.

1 The exercise of the powers granted to the authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is a public purpose. As the construction, acquisition, repair or renovation of community infrastructure projects will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon any community infrastructure project or upon any property acquired or used by the authority or upon the income therefrom. Such bonds and notes and all interests and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.

No officer, member or employee of the authority shall be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or from the authority. This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency. If any officer, member or employee of the authority has such financial interests in the contract or sale of property prohibited hereby, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§31-19-19. Meetings and records of authority to be kept public.

All meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized and such journals shall also be open to the inspection of the public at all reasonable times. Any records or information relating to secret processes or secret methods of manufacture or production which may be obtained by the authority or other persons acting under authority of this article are confidential and shall not be disclosed.

§31-19-20. Liberal construction of article.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.


If any section, part or provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect any other section, part or provision of this article or its application and to this end the 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 building or any land no longer shall be needed for school purposes, the board may sell, dismantle, remove or relocate any such buildings and sell the land on which they are located, at public auction, after proper notice, and on such terms as it orders, to the highest responsible bidder.

2 But in rural communities, the grantor of the lands, his heirs or assigns, shall have the right to purchase at the sale, the land, exclusive of the buildings thereon, and the mineral rights, at the same price for which it was originally sold: Provided, That the sale to the board was not a voluntary arms length transaction for valuable consideration approximating the fair market value of the property at the time of such sale to the board: Provided, however, That this section shall not operate to invalidate any provision of the deed to the contrary. The board, by the same method prescribed for the sale of school buildings and lands, may also lease for oil or gas or other minerals any lands or school sites owned in fee by it. The
proceeds of such sales and rentals shall be placed to the
credit of such fund or funds of the district as the board
may direct: Provided further, That the provisions of
this section concerning sale at public auction shall not
apply to boards of education selling or disposing of its
property for a public use to the state of West Virginia, or
its political subdivisions, including county commissions
or divisions thereof, for an adequate consideration without
considering alone the present commercial or market value
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 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 state be literate so that the quality of their own lives may be enhanced and they may contribute to the well-being and advancement of the entire state through increased productivity. The intent of this legislation is to provide additional funding for the education of adults in the basic literacy skills of reading, writing and computation.

8 Activities in this program include:

9 (a) Identification and recruitment of persons over the age of twenty-one who are deficient in their basic literacy skills;

(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
Check if you wish to designate a portion of your tax refund to this program:

$1 ( ) $5 ( ) $10 ( ) Other $_______( )

If joint return, check if spouse wishes to designate a portion of tax refund:

$1 ( ) $5 ( ) $10 ( ) Other $_______( )

Each individual taxpayer desiring to voluntarily contribute to this program may so indicate by placing an “X” in the appropriate box on the state personal income tax return form. The contribution shall be credited to the adult literacy education program fund.

(c) The tax commissioner shall determine by the first day of July of each year the total amount designated pursuant to this section and shall report that amount to the state treasurer who shall credit that amount to the adult literacy education program fund.

(d) The provisions of this section shall apply to tax return forms filed on and after the first day of January, one 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.

(a) There is hereby established in the state treasury a separate account which shall be designated the "West Virginia rehabilitation center special account." The director of vocational rehabilitation shall deposit promptly into the account all fees received for services provided by the West Virginia rehabilitation center from whatever source, including the federal government, state government or from other third-party payers or personal payments.

(b) A five-year West Virginia rehabilitation center long-range plan shall be developed by the director and shall be adopted by the state board of vocational education. The West Virginia rehabilitation center's long-range plan shall be updated and revised at least every two years.

(c) The director is authorized to expend the moneys deposited in the West Virginia rehabilitation center special account in accordance with federal laws and regulations, and with the laws of this state as is necessary for the development of the five-year center long-range plan and subsequent revisions.

(d) The director is authorized to expend the moneys deposited in the West Virginia rehabilitation center special account as provided in the center's long-range plan at such times and in such amounts as the director determines to be necessary for the purpose of maintaining or improving the delivery of rehabilitation center services or for the purpose of maintaining or obtaining certification at the rehabilitation center: Provided, That during the budget preparation period which occurs prior to the convening of the Legislature, the director shall submit for inclusion in the executive budget document and budget bill his recommended capital expenditures, recommended priorities, estimated costs and request for appropriations for maintaining or improving the delivery of vocational rehabilitation services and for maintaining or obtaining certification at the rehabilitation center in such amounts as the director determines to be necessary to implement
the five-year rehabilitation center long-range plan and
any subsequent revisions thereto.

(e) The director shall make an annual report to the
Legislature on the status of the rehabilitation center
revenue account, including the previous year's expendi-
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.

(a) The director shall establish and maintain a central registry of persons who sustain spinal cord injury or severe head injury other than through disease, whether or not permanent disability results, in order to facilitate the provisions of appropriate rehabilitative services by the division or other state agencies to such persons.

(b) The current acute care facility shall report to the director by the most expeditious means within seven days after identification of any person sustaining such
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-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-1. Legislative purpose.

The Legislature finds that the percentage of the population in this state attending college is substantially lower than the national average; that higher education in this age of advanced technology is a key element in the efforts to invigorate and develop the economy of our state; that opportunities for students attending a college or university in this state are diminished because of limited access to programs of financial assistance; and that the cost of attending college has dramatically increased and has become a great burden upon family budgets.

It is therefore the policy of the Legislature to establish a state higher education student assistance loan program to guarantee that deserving residents of this state have the opportunity to continue their education at an approved institution of higher education of their choice in this state.


The following words when used in this article have the meaning hereinafter ascribed to them, unless the context clearly indicates a different meaning:

(a) “Board” means the West Virginia board of regents.

(b) “Eligible lending institution” or “institution” means a financial institution that is eligible to make commercial loans, is a public depository of state funds and agrees to participate in the West Virginia higher education student assistance loan program.

(c) “Eligible student” means any individual who:

(1) Is a citizen or eligible noncitizen of the United States;

(2) Has been a resident of the state for at least one year immediately preceding the date of application for a West Virginia higher education student assistance loan;
(3) Is currently enrolled in good standing or accepted for enrollment at an approved institution of higher education in this state of the student's choice; and

(4) Is certified by such institution in accordance with section three of this article.

(d) "Linked deposit" means a certificate of deposit placed by the state treasurer with an eligible lending institution at three percent below current market rates, as determined and calculated by the state treasurer, provided the institution agrees to lend the value of such deposit, according to the deposit agreement provided for by this article, to eligible students at three percent below the present borrowing rate applicable to each such student at the time of the deposit of state funds in the institution.

(e) "Approved institution of higher education in this state" means nonprofit, degree-granting two-year and four-year colleges and universities located in West Virginia.

§18-22D-3. Certification of eligibility; information as to other financial assistance; approval of maximum loan amount.

(a) The board of regents shall have full authority to administer the program in accordance with the provisions of this article. In furtherance of such administration, the board shall approve institutions of higher education in this state for participation in the loan program, establish guidelines for use by such institutions in determining which applicants are eligible students and in calculating the maximum loan amounts, and develop a uniform eligibility certification and maximum loan amount form to be used by the applicant and the approved institution of higher education in determining and certifying eligibility and maximum loan amounts. The board shall further provide information as to the federal guaranteed student loan program and other financial assistance which may be available to the applicant, which information shall be conveyed to such applicants by the approved institution of higher education.
(b) Upon receipt of an applicant's certification form, the approved institution of higher education shall review such form, certify any student who meets the eligibility guidelines promulgated by the board and indicate on such form the maximum loan amount which may be received by the applicant pursuant to this article. The institution shall calculate such amount with consideration to any other financial assistance which is or will be received by the applicant and shall assist such applicant in receiving such other financial assistance. In no case shall the annual loan amount to an eligible student exceed six thousand dollars for undergraduate study or ten thousand dollars for graduate or professional study, and the eligible student shall receive not more than five such loans for undergraduate study and three such loans for graduate or professional study. Any applicant who is not certified as eligible shall be notified in writing as to the reasons for which certification was not granted.

(c) Any applicant who is denied eligibility certification or has a maximum loan amount approved which is less than the applicant reasonably believes is required for attendance at the approved institution of higher education may request in writing to the board a hearing on any such matter. The board may conduct such hearing or may respond in writing as to the reasons such hearing is denied. Any decision by the board regarding eligibility or maximum loan amount shall be final.

§18-22D-4. Limitations on investment in linked deposits.

The state treasurer shall invest in linked deposits as identified by the board through an approved application, provided that at the time of placement of the linked deposit, exclusive of the linked deposit program provided for in article one-a, chapter twelve of this code, not more than two percent of the state's total investment portfolio is so invested. The total amount initially deposited in any one year shall not exceed twelve million dollars, and the total amount so deposited at any one time shall not exceed, in the aggregate, one hundred twenty million dollars.

§18-22D-5. Applications for loans; loan package.
(a) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from applicants certified as eligible students. The lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible student. In no case shall the applicant request, nor the eligible lending institution approve, an annual loan amount in excess of the maximum amount indicated on the form certifying such applicant as an eligible student.

(b) An eligible student shall certify on the loan application that the reduced rate loan will be used exclusively to attend an approved institution of higher education in this state. Whoever knowingly makes a false statement concerning such application shall be prohibited from entering into the West Virginia higher education student assistance loan program. Whoever knowingly uses loan proceeds received pursuant to this article for reasons other than attendance at an approved institution of higher education shall be prohibited from benefitting from the linked deposit, which deposit shall be withdrawn upon maturity, and the loan shall revert to the rate of market interest originally determined.

(c) Upon approval of all or any portion of the loan amount requested for which a linked deposit is sought, the eligible lending institution shall forward to the board a linked deposit loan package, in such form and manner as shall be prescribed by the state treasurer in cooperation with the board. The package shall include such information as may be needed by the board or the treasurer, including the certification form and the amount of the loan requested by the eligible student. The eligible lending institution shall certify, for each eligible student, the present borrowing rate applicable to such student.

§18-22D-6. Acceptance or rejection of loan package; deposit agreement.

(a) The board may approve or reject a linked deposit loan package. Upon approval by the board of the linked deposit loan package, the board shall forward such
approved application to the state treasurer, and the state
treasurer shall place certificates of deposit, within the
limitations provided for in section four of this article,
with the eligible lending institution at three percent
below current market rates, as determined and calcu-
lated by the state treasurer.

(b) The eligible lending institution shall enter into a
deposit agreement with the state treasurer, which shall
 include requirements necessary to carry out the pur-
poses of this article. Such requirements shall reflect the
market conditions prevailing in the eligible lending
institution's lending area. The agreement may include
a specification of the period of time in which the eligible
lending institution is to lend funds after the placement
of a linked deposit and shall include provisions for the
certificates of deposit to be placed for up to two-year
maturities that may be renewed for periods up to two
years until such time as the loan has been completely
repaid, or ten and one-half years after the eligible
student's cessation of enrollment in the approved
institution of higher education to which the loan
proceeds were paid, whichever is sooner. Interest shall
be paid at the times determined by the state treasurer.

§18-22D-7. Rate of loan; repayment.

(a) Upon placement of a linked deposit with an
eligible lending institution, such institution is required
to lend such funds to each approved eligible student
listed in the linked deposit loan package required in
subsection (c), section five of this article, and in
accordance with the deposit agreement required by
subsection (b), section six of this article. The loan shall
be at three percent below the present borrowing rate
applicable to each eligible student.

(b) Upon request therefor and approval thereof, the
loan agreement may require repayment of interest only,
until such time as the eligible student commences
repayment of the principal. Such repayment of the
principal shall commence at or before such time as the
eligible student is no longer enrolled in the approved
institution of higher education for which the loan
proceeds were paid or within five years of receipt of the loan, whichever is sooner: *Provided*, That an eligible student who enrolls in graduate or professional school subsequent to the enrollment for which a loan or loans were received pursuant to this section may defer such repayment time until completion or withdrawal from the graduate or professional school.

(c) Notwithstanding the time in which the eligible lending institution may provide for the repayment of the loan, the linked deposit shall be terminated at the maturity date next succeeding complete repayment or ten and one-half years after cessation of enrollment, whichever is sooner. The amount of interest on the loan shall revert to the market rate originally determined at such time as the linked deposit is withdrawn.

§18-22D-8. Certification and monitoring of compliance; reports.

(a) A certification of compliance with any applicable provisions of this article, in such form and manner as shall be prescribed by the state treasurer in cooperation with the board, shall be required of the eligible lending institution.

The board of regents, in cooperation with the state treasurer, shall monitor compliance by the eligible student with the applicable provisions of this article and may take whatever action may be deemed necessary in furthering the intent of the student loan program.

(b) By the first day of January, April, July and October of each year, the treasurer shall report on the linked deposit program for the preceding calendar quarter to the governor, the joint committee on government and finance, and the board. The reports shall set forth the linked deposits made by the state treasurer under the program during the quarter and shall include information regarding the nature, terms and amounts of the loans upon which the linked deposits were based and the eligible students to which the loans were made.

The state, the board of regents, and the state treasurer are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible student. Any delay in payment or default on the part of an eligible student does not in any manner affect the deposit agreement between the 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.
A county board of education, the teachers retirement board, the West Virginia board of education and the board of regents and their agencies may provide by written agreement between any such board or agency and any teacher or other employee to reduce the cash salary payable to such teacher or other employee, and, in consideration thereof, to pay an amount equal to the amount of such reduction as premiums on an annuity contract or payments on a custodial account or other investment owned by such teacher or other employee, which annuity contract, custodial account or other investment is in such form and upon such terms as will qualify the payments thereon for tax deferment under the United States Internal Revenue Code. The amount of such reduction shall not exceed the amount excludable from income under section 403(b) of the United States Internal Revenue Code, and amendments and successor provisions thereto, and shall be considered a part of the teacher's or employee's salary for all purposes other than federal and state income tax.

The purchase of such tax deferred investment for a teacher or other employee by a board of education, the teachers retirement board, the West Virginia board of education and the board of regents and their agencies shall impose no liability nor responsibility whatsoever on said boards or members thereof except to show that the payments have been remitted for the purposes for which deducted.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-12. Tax deferred investments for teachers and other employees.

For the purpose of this section, when an employee shall have attained the age of eighteen years the said employee may be eligible to participate in the defined group plans.

A county board of education, the teachers retirement board, the West Virginia board of education and the
board of regents of West Virginia and their agencies may provide, by written agreement between any such board or agency and any teacher or other employee to reduce the cash salary payable to such teacher or other employee, and, in consideration thereof, to pay an amount equal to the amount of such reduction as premiums on an annuity contract or payments on a custodial account or other investment owned by such teacher or other employee, which annuity contract, custodial account or other investment is in such form and upon such terms as will qualify the payments thereon for tax deferment under the United States Internal Revenue Code. The amount of such reduction shall not exceed the amount excludable from income under section 403(b) of the United States Internal Revenue Code, and amendments and successor provisions thereto, and shall be considered a part of the teacher's or employee's salary for all purposes other than federal and state income tax.

The purchase of such tax deferred investment for a teacher or other employee by a board of education, the teachers retirement board, the West Virginia board of education and the board of regents of West Virginia and their agencies shall impose no liability nor responsibility whatsoever on said boards or members thereof except to show that the payments have been remitted for the purposes for which deducted.

CHAPTER 66
(H. B. 1306—By Delegate Knight and Delegate HoblitzeI)

[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.

There is hereby created a state agency to be known as the West Virginia board of regents, which shall be a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal.

After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the West Virginia board of regents should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the West Virginia board of regents shall continue to exist until the first day of July, one thousand eight hundred eighty-eight.

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 empowered to sell those parcels of land situate on the Chestnut Ridge Road in Monongalia County, West Virginia, bounded and described as follows:

Beginning at a hub in the edge of the Chestnut Ridge Road along the boundary formerly belonging to Sam Ivill; thence with Ivill, N 10 degrees 01' W 260.04 feet to a hub, corner to the lands of Blanche Sayre found in Deed Book No. 481, at Page 95; thence with Sayre, S 89 degrees 36' E 295.45 feet to a hub, corner to W. V. Board of Regents in Deed Book No. 584, at Page 1; thence with W. V. Board of Regents S 0 degrees 55' W 255.82 feet to a hub at the northern edge of the Chestnut Ridge Road; thence along the northern edge of the Chestnut Ridge Road, N 89 degrees 36' W 254.00 feet to the place of beginning, containing 1.61 acres, more or less, as surveyed by Triad Engineering Consultants on 6/27/79.

(b) The board of regents is hereby further authorized and empowered to sell those parcels of land situate in Terra Alta, Preston County, West Virginia, bounded and described as follows:

Those lots or parcels of real estate situated in Portland District, Preston County, West Virginia, containing 48.28 acres recorded under Book 283, Page 217.

(c) Such sale shall be by public auction: Provided, That prior to such action the board of regents shall have the property appraised by two licensed appraisers and shall not sell the property for less than the average of the appraisals.
(d) The proceeds from the sale of the property referred to shall be deposited in a special revenue account from which the board of regents is hereby authorized to expend the funds therefrom for development of the Downtown Campus, at West Virginia University, in Morgantown.

CHAPTER 68

(S. B. 231—By Senators Burdette, Holmes, Whitlow, 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 article is to require the board to establish, control, supervise and manage a complete, uniform system of personnel classification in accordance with the provisions of this article for all employees other than faculty and nonclassified employees at state institutions of higher 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 including, but not limited to, those which are differentiated by Roman numerals;

4 (c) “Classified employee” means any regular full-time or regular part-time employee of the board who holds a position that is assigned a particular job title and pay grade in accordance with the personnel classification system established by the board;

5 (d) “Nonclassified employee” means an individual who is responsible for policy formation at the institutional level or reports directly to the president: Provided, That the percentage of personnel placed in the category of “nonclassified” at any given institution may not exceed
four percent of the total number of employees of that institution who are eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state. Final approval of such placement shall rest with the board;

(e) "Institution" or "institutions" means the public institutions of higher education within this state;

(f) "Job description" means the specific listing of duties and responsibilities as determined by the board and associated with a particular job title;

(g) "Job title" means the name of the position or job as defined by board policy;

(h) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or to rectify salary inequities or accommodate competitive market conditions in accordance with policy established by the board;

(i) "Pay grade" means the letter grade assigned by the board to a particular job title and refers to the horizontal column heading of the salary schedule established in section three of this article;

(j) "Personnel classification system" means the process of job evaluation adopted by the board by which job title, job description, pay grade and placement on the salary schedule are determined;

(k) "Salary" means the amount of compensation paid through the state treasury per month to a classified employee;

(l) "Schedule" or "salary schedule" means the grid of monthly salary figures established in section three of this article; and

(m) "Years of experience" means the number of years a person has been an employee of the state of West Virginia and refers to the vertical column heading of the salary schedule established in section three of this article. For the purpose of placement on the salary schedule pursuant to said section three, employment for nine months or more shall equal one year of experience, but no classified employee may accrue more than one year of experience during any given fiscal year. Employment for less than full-time or less than nine months during any fiscal year shall be prorated. For the purpose of determining the
amount of annual salary increase pursuant to subsection (b), section five of this article, employment for less than twelve months during any fiscal year shall be prorated. In accordance with rules and regulations established by the board, a classified employee may be granted additional years of experience not to exceed the actual number of years of prior, relevant work or experience at accredited institutions of higher education other than state institutions of higher education.

§18-26B-3. Higher education classified employee monthly salary schedule.

There is hereby established a state monthly salary schedule for classified employees consisting of a minimum monthly salary for each pay grade in accordance with years of experience: Provided, That payment of the minimum salary shall be subject to the availability of funds, and nothing in this article shall be construed to guarantee payment to any classified employee of the salary indicated on the schedule at the actual years of experience. The minimum salary herein indicated shall be prorated for regular part-time classified employees.

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§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 eighty-six, the board shall establish by board policy a
system of job classifications, each classification to consist
of related job titles and corresponding job descriptions for
each position within a classification, together with the
designation of an appropriate pay grade for each job title.
By such date and with consideration to recommendations
of the institutions, the board shall furnish each classified
employee written confirmation of the assignment to the
appropriate classification, job title and pay grade and of the
proper placement on the salary schedule pursuant to
section three of this article notwithstanding the actual
salary paid. Such assignment may be appealed in
accordance with article twenty-nine of this chapter:
Provided, That nothing herein shall nullify or void prior to
the first day of January, one thousand nine hundred eighty-
seven, any personnel classification system in effect on the
effective date of this article.
§18-26B-5. Classified employee salary.
(a) Each classified employee who is employed by the
board on the effective date of this article shall receive for
the same employment at the same pay grade during the
fiscal year commencing on the first day of July, one
thousand nine hundred eighty-six, and thereafter, a
monthly salary which is at least equal to the final monthly
salary paid such classified employee for the fiscal year
commencing on the first day of July, one thousand nine
hundred eighty-five, and an annual salary increase of six
hundred dollars in addition thereto, to be paid in equal
installments within the regular pay periods. Such increase
shall be prorated for regular part-time employees or those
employed for less than a twelve-month period.
(b) Commencing with the fiscal year beginning on the
first day of July, one thousand nine hundred eighty-six, and
each fiscal year thereafter, each classified employee with
three or more years of experience shall receive an annual
salary increase equal to thirty-six dollars times the
employee’s years of experience, less any incremental salary
increase granted in a prior fiscal year and actually
incorporated into and becoming an integral part of base
salary prior to fiscal year one thousand nine hundred
eighty-seven: Provided, That such annual salary increase
shall not exceed the amount granted for the maximum of
twenty years of experience. These incremental increases shall be in lieu of any salary increase received pursuant to section two, article five, chapter five of this code; shall be in addition to any across-the-board, cost-of-living or percentage salary increases which may be granted in any fiscal year by the Legislature; and shall be paid in equal installments within the regular pay periods.

(c) Each classified employee whose monthly salary under subsections (a) and (b) of this section is less than the minimum monthly salary for zero years of experience for the appropriate pay grade as set forth in section three of this article shall receive for the fiscal year commencing on July first, one thousand nine hundred eighty-six, additional compensation such that the monthly salary is at least the minimum amount prescribed for the appropriate pay grade at zero years of experience: Provided, That such amounts may be reduced proportionately based upon the amount of funds available for such purpose.

(d) Funds remaining after increasing the monthly salary of each classified employee to at least the minimum amount prescribed for the appropriate pay grade at zero years of experience shall be used to place classified employees on the salary schedule at their appropriate years of experience: Provided, That such amount may be reduced proportionately based upon the amount of funds available for such purposes.

(e) Any classified employee may receive merit increases and/or salary adjustments in accordance with policies established by the board: Provided, That funds for such increases and/or adjustments shall be distributed in accordance with board policy and shall be available to all state institutions of higher education on an equitable basis.

(f) The current monthly salary of any classified employee may not be reduced by the provisions of this article nor by any other action inconsistent with the provisions of this article, and nothing in this article shall be construed to prohibit promotion of any classified employee to a job title carrying a higher pay grade if such promotion is in accordance with the provisions of this article and the personnel classification system established by the board.

§18-26B-6. Annual review of classifications and classification system; notice and reports required.
Each institution shall review annually each job description in relationship to the assigned duties and responsibilities, current job title and pay grade of each classified employee of that institution. Based upon the data collected through such review, each institution shall determine which, if any, of its classified employees should be recommended for a change in job title in order to conform to the personnel classification system of the board: Provided, That any classified employee filling a position or carrying out the duties and responsibilities of a position normally assigned a higher pay grade in accordance with the personnel classification system established by the board shall be recommended for a change in job title or shall be returned immediately to the duties and responsibilities outlined in such employee's appropriate job description.

Each institution shall submit to the board by the first day of September, one thousand nine hundred eighty-six, and each year thereafter, a report which shall include the steps being taken to ensure proper employee classification in accordance with the appropriate job titles and pay grades as established by the board, any recommended changes in job title, the justification for such recommendations, the effect of such changes on existing personnel, and the fiscal impact thereof.

Each institution also may submit, as part of its annual report to the board, recommendations for alterations in job descriptions or classifications, changes in corresponding pay grades, or creation of new job titles or classifications. Such changes, if approved by the board, shall be made a part of the personnel classification system of the board and shall be applied uniformly at all institutions: Provided, That when necessary, the board may order changes in classifications or changes in job titles upon its own authority and shall notify the institutions of such changes within thirty days.

The board, upon receipt and review of the annual report submitted by each institution, shall notify the reporting institution by the first day of December, one thousand nine hundred eighty-six, and each year thereafter, of any action taken in response to recommendations made by the institution. Immediately upon receipt of notification of any changes in the personnel classification system by the board,
the institution shall post copies of such notice in prominent campus locations. Changes in classification or changes in job title, as approved by the board, shall be effective no later than the first day of July of each year. When such changes affect currently employed personnel, each classified employee so affected shall be notified in writing regarding such change and the effect thereof.

§18-26B-7. Conferences regarding personnel classification.

(a) The president of the institution or the designees charged with responsibility to develop any personnel recommendations for inclusion in the institution's annual report to the board shall meet and confer during development of the recommendations with the classified employees who (1) may be affected by proposed recommendations to the board; or (2) have requested a change in job title.

(b) In accordance with the provisions of article twenty-nine of this chapter relating to employee grievance procedures, a classified employee may appeal the initial assignment, any change in the assigned classification or job title, or any change in the system of classification, whether such change is the result of action taken by the board upon its own authority or upon the recommendations of the institutions.

§18-26B-8. Hirings after effective date.

Any individual hired as a full-time classified employee after the effective date of this section shall be assigned by the board, with consideration to any recommendations of the institution, to a placement on the salary schedule which is appropriate to such individual's classification, job title, pay grade and years of experience: Provided, That nothing in this section shall be construed to guarantee to a newly hired classified employee payment of the salary prescribed in section three of this article.

§18-26B-9. Additional employment by mutual agreement; provision for board approval.

In accordance with policy established by the board and by mutual agreement, the president of an institution, or a designated representative, and a classified employee at such institution may agree on duties to be performed by
such employee in addition to those duties listed in the job
description. The terms and conditions of any such
agreement shall be in writing, signed by both parties, and
shall describe the additional duties to be performed, the
length of time such agreement shall be in force and the
additional compensation to be paid. Such agreement shall
be submitted to the board and shall be in effect unless and
till the institution receives notice of nonapproval within
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.

Citizens of the state shall be entitled to vote at all elections held within the precincts of the counties and municipalities in which they respectively reside. But no person who has not been registered as a voter as required by law, or who is a minor, or of unsound mind, or who is under conviction of treason, felony or bribery in an election, or who is not a bona fide resident of the state, county or municipality in which he offers to vote, shall be permitted to vote at such election while such disability continues. Subject to the qualifications otherwise prescribed in this
section, however, a minor shall be permitted to vote only in a primary election if he will have reached the age of eighteen years on the date of the general election next to 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.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

The precinct shall be the basic territorial election unit. The county commission shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine and establish the boundaries thereof, and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall contain at least one voting precinct and each precinct shall have but one voting place therein.

Each precinct within any urban center shall contain not less than three hundred nor more than eight hundred registered voters. Each precinct in a rural or less thickly settled area shall contain not less than two hundred nor more than seven hundred registered voters, unless upon a written finding by the county commission that establishment of or retention of a precinct of less than two hundred voters would prevent undue hardship to the voters, the secretary of state determines that such precinct be exempt from the two hundred voter minimum limit. If, at any time the number of registered voters exceeds the maximum number specified, the 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
31 In order to facilitate the conduct of local and special
32 elections and the use of election registration records
33 therein, precinct boundaries shall be established to
34 coincide with the boundaries of any municipality of the
35 county and with the wards or other geographical
36 districts of the municipality except in instances where
37 found by the county commission to be wholly imprac­
38 ticable so to do. Governing bodies of all municipalities
39 shall provide accurate and current maps of their
40 boundaries to the clerk of any county commission of a
41 county in which any portion of the municipality is
42 located.
43
44 The provisions of this section are subject to the
45 provisions of section twenty-eight, article four of this
46 chapter relating to the number of voters in precincts in
47 which voting machines are used.
48
49 The county commission shall keep available at all
50 times during business hours in the courthouse at a place
51 convenient for public inspection a map or maps of the
52 county and municipalities with the current boundaries
53 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.
No person is eligible to be appointed a registrar, or in any way act as such, if he or she has been convicted of a felony; or if he or she holds, or is a candidate for, any elective or appointive office; or is a public employee, under the laws of this state or of the United States; or cannot read or write the English language. If any registrar fails or refuses to serve or is properly dismissed, the vacancy shall be filled either by the county commission or by the clerk thereof in vacation, in the manner provided for the appointment of registrars. Each registrar, before entering upon the discharge of his or her duties, shall take an oath that he or she will perform the duties of the office to the best of his or her ability, which oath shall be filed in the office of the clerk of the county commission.

An equal number of such registrars shall be selected from the two major political parties. The county commission shall, at least four weeks prior to making such appointment, request the county executive committee of each of the two political parties to submit a list of names, equal to one half of the total number to be appointed, of persons qualified to act as registrars; and the county commission shall, if such lists are submitted, appoint the qualified persons recommended and shall notify each registrar of his or her appointment. Every list so presented shall be filed and preserved for one year by the clerk of the county commission. Any and every act performed by any registrar under the provisions of this article is void unless performed in conjunction with a registrar of the opposite political party at the same time and place.

Before acting, all such registrars shall attend a session, or sessions, of instruction by the clerk of the county commission, or some person designated by him or her, concerning the performance of their duties.

Immediately following such instruction the clerk of the county commission shall give to the registrars a copy of the laws and regulations relating to registration of voters, written instructions for performing their duties, and all necessary forms and other supplies, including maps with municipal precincts superimposed over
county precincts in cases where boundaries differ, and a certified list of all registered voters within the precinct or precincts for which such registrars were appointed, upon such form as may be prescribed by the secretary of state. Such registrars shall proceed together to make a house-to-house canvass in their precincts for the purpose of making the biennial checkup allowed by section twenty-one of this article. Each biennial checkup shall be completed at least sixty days before the statewide primary election following the appointment of the registrars. In making the checkup the registrars shall not reregister any person who is already registered in such precinct, but shall determine whether or not such person is duly registered and qualified to vote therein.

The registrars shall require valid identification and proof of age of each registrant, and shall inquire and attempt to establish whether the registrant resides within a municipality. The registrars shall have the registrant complete the voter registration form for county-state permanent registration and if the person resides within the limits of a municipality for which a separate registration file is kept, the registrars shall also have the registrant complete the form for municipal registration.

§3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.

The clerk or any deputy clerk of the county commission may register any qualified person as a voter. The clerk or deputy shall first require valid identification and proof of age, and inquire and attempt to establish whether the voter resides within the limits of a municipality using the map provided by the municipality in accordance with section five, article one of this chapter. The clerk or deputy clerk shall have the person registering fill in and complete the prescribed voter registration form for county-state permanent registration. If the person resides within the limits of a municipality for which a separate registration file is kept, the clerk or deputy shall also have the person
complete the form for municipal registration. The registrant shall sign the form or forms under oath or affirmation. The clerk, upon proper proof, may alter, amend, correct or cancel the registration record of any voter. Such registration or alteration, amendment, correction or cancellation of registration records shall be carried on throughout the year.

During the biennial checkup period of every even-numbered year, the clerk or deputy clerk shall visit every public or private institution, excluding hospitals, in which reside aged, infirm, disabled or chronically ill persons and every high school to register qualified voters. The clerk shall establish at least one temporary registration office per magisterial or tax district, whichever is more numerous, to register qualified persons or to alter, amend, correct or cancel such registration records. Temporary registration offices shall be open at least three days, including one Saturday and one evening, not more than sixty days nor less than thirty days prior to each primary and each general election. The hours shall be posted and advertised as a Class III-0 legal advertisement with the publication area being the magisterial district. The clerk of the county commission shall also solicit public service advertising of such registration offices and times on radio, television and newspapers serving that county.

Within fifteen days following receipt of a death certificate from the state or local registrar of vital statistics or the publication in a newspaper of the county an obituary clearly identifying a deceased person by name, residence and age, the clerk of the county commission shall cancel the voter registration, if any, of the person shown to be deceased by such certificate or obituary.

Sixty days prior to a general election, the clerk of the county commission shall review each death certificate received by him and shall cancel the voter registration, if any, of each deceased person whose voter registration has not previously been canceled. By the forty-fifth day prior to a general election each clerk of a county commission shall certify to the secretary of state that he
has performed the duty required by this paragraph.

If found necessary, the county commission may order and direct the clerk of the county commission to maintain additional office hours in the evening or at other proper times and places for accommodation of voter registration.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-11. Preparation, number and handling of absent voters' ballots.

Absent voters' ballots shall be in all respects like other ballots. Not less than seventy days prior to the date on which any primary, general or special election is to be held, unless a lesser number of days is provided for in any specific election law in which case such lesser number of days shall apply, the clerks of the circuit courts of the several counties shall estimate and determine the number of absent voters' ballots of all kinds which will be required in their respective counties for any such election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, shall be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in such number as they shall determine, such absent voters' ballots as are to be printed under their directions as hereinbefore provided, and such ballots shall be delivered to the clerk of the circuit court of the county not less than forty-two days prior to the day of the election at which they are to be used. Before any ballot is mailed or delivered, the clerk of the circuit court shall affix his official seal and he and the other members of the board of ballot commissioners shall place their signatures near the lower left-hand corner on the back thereof. An absent voter's ballot not containing such seal and signatures shall be invalid and shall be subject to challenge by any election commissioner or poll clerk.

The clerk of the circuit court shall be primarily
responsible for the preparation, mailing, receiving, delivering and otherwise handling of all absent voters' ballots. He shall keep such record, as may be prescribed by the secretary of state, of all ballots so delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him, and shall deliver to the commissioner of election to whom the ballots for the precinct are delivered and at the time of the delivery of such ballots a certificate stating the number of ballots delivered or mailed to absent voters, and those marked before him, if any, and the names of the voters to whom such ballots have been delivered or mailed, or by whom 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.

Subject to the provisions and limitations of section five of this article, the county commission of any county may change the boundaries of any precinct within such county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change the location of any polling place whenever the public convenience may require it.
No order effecting such change, division, or consolidation shall be made by the county commission within ninety days next preceding an election nor without giving notice thereof at least one month before such change, division or consolidation, by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such precinct or precincts are located. The county commission shall also, within fifteen days after the date of the order, cause a copy to be published as aforesaid.

The county commission shall also, before the next succeeding election, cause the voters in the several precincts affected by the order to be duly registered in the proper precinct or precincts.

The county commission shall keep in a well-bound book, marked “election precinct record,” a complete record of all their proceedings hereunder and of every order made creating a precinct or precincts or establishing a place of voting therein. Such “election precinct record” shall be kept by the county commission clerk in his office, and shall, at all reasonable hours, when not actually in use by the county commission, be open to inspection by any citizen of the county.

When the county commission establishes a polling place at a location other than the location used for holding the preceding primary, general or special election in that precinct, the commission shall cause a notice to be posted on election day on the door of the previous polling place describing the location of the newly established polling place.

If for any reason the election cannot be held at the designated polling place in a precinct, and no provision has been made by the county commission for holding the election at another place, the commissioners of election for that precinct may hold the election at the nearest place which they can secure for the purpose. They shall make known by proclamation to voters present at the time for opening the polls, and by posting a notice at
or near the entrance of the first named polling place, the location at which the election will be held. The county commission shall establish another place of voting for that precinct as soon thereafter as practicable.

Notwithstanding any provision herein to the contrary, in the case of an emergency, the county commission may make such precinct change no later than sixty days prior to an election in accordance with the requirements herein with the approval of the secretary of state. Such change, if made however, shall not cause any voter to 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 provide cards of general information and cards of instruction for voters in preparing their ballots, as prescribed by the secretary of state. They shall furnish
a sufficient number of cards to the commissioners of
election at the same time they deliver the ballots for the
precinct.

The commissioners of election shall post one instruc-
tion card in each voting booth giving instructions to the
voters on how to prepare the ballots for deposit in the
ballot boxes and how to obtain a new ballot in place of
one accidentally spoiled.

The commissioners of election shall post one or more
other cards of general information at places inside and
outside of the voting place where voters pass or wait to
vote.

The ballot commissioners shall also cause to be
printed, on a different color paper than the official
ballot, ten or more copies of the ballots provided for each
voting place, at each election therein, which shall be
designated sample ballots, and shall be furnished and
posted with the cards of general information at each
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; restric-
tions 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
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 while going to the election room to vote and returning therefrom, may be or remain within three hundred feet of the outside entrance to the building housing the polling place while the polls are open; but this section does not apply to persons living or carrying on business within that distance of the election room, while in the discharge of their legitimate business, or to persons whose business requires them to pass and repass within three hundred feet of such entrance.

11. A person who is delivering a voter to a polling place by motor vehicle may drive such vehicle to a convenient and accessible location to discharge the voter, notwithstanding that the location is within three hundred feet of the outside entrance to the building housing the polling place. Upon discharging such voter from the vehicle, the person shall remove the vehicle from within three hundred feet of the entrance until such time as the voter is to be transported from the polling place or another voter delivered: Provided, That vehicles delivering voters who require assistance by reason of blindness, disability or advanced age may remain within three hundred feet of the entrance until such time as the voter is to be transported from the polling place.

25. The election commissioners shall limit the number of voters in the election room so as to preserve order. No person may approach nearer than five feet to any booth or compartment while the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation
of his ballot, and no person, other than election officers and voters engaged in receiving, preparing and depositing their ballots, may be permitted to be within five feet of any ballot box, except by authority of the board of election commissioners, and then only for the purpose of keeping order and enforcing the law.

Not more than one person may be permitted to occupy any booth or compartment at one time. No person may remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot, and in no event longer than five minutes, except that any person who claims a disability pursuant to section thirty-four of this article shall have additional time up to ten additional minutes to prepare his ballot. No voter, or person offering to vote, may hold any conversation or communication with any person other than the poll clerks or commissioners of election, while in the election room.

The provisions of this section do not apply to persons rendering assistance to blind voters as provided in 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.

If any person, not herein authorized so to do, enters or attempts to enter the election room, except upon a lawful errand and for a proper purpose, or remains within three hundred feet of the outside entrance to the building housing the polling place, contrary to the provisions of this chapter, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, or confined in the county jail for not more than thirty days.

Excepting those individuals provided for expressly in this or other sections of the code, only full-time employees of the secretary of state's office or full-time
§3-9-9. Other unlawful acts at polling places; penalties.

No officer of election may disclose to any person the name of any candidate for whom a voter has voted. No officer of election may do any electioneering on election day. No person may do any electioneering on election day within any polling place, or within three hundred feet of the outside entrance to the building housing the polling place. No person may apply for or receive any ballot in any polling place, other than that in which he is entitled to vote, nor may any person examine a ballot which any voter has prepared for voting, or solicit the voter to show the same, nor ask, nor make any arrangement, directly or indirectly, with any voter, to vote an open ballot. No person, except a commissioner of election, may receive from any voter a ballot prepared by him for voting. No voter may receive a ballot from any person other than one of the poll clerks; nor may any person other than a poll clerk deliver a ballot to a commissioner of election to be voted by such commissioner. No voter may deliver any ballot to a commissioner of election to be voted, except the one he receives from the poll clerk. No voter may place any mark upon his ballot, or suffer or permit any other person to do so, by which it may be afterward identified as the ballot voted by him. Whoever violates any provision of this section shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in jail for not more than one year, or both fined 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 established which shall be uniform throughout the state and all of its subdivisions. No voter so registered shall be required to register again for any election while he continues to reside at the same address, or, having moved from such address, is properly transferred according to the provisions of section twenty-seven or forty-one of this article, unless his registration is canceled as provided in this article.

2 Within one hundred and twenty days following any election, the clerk of the county commission shall, as evidenced by the presence or absence of signatures on the pollbooks for such election, correct any errors or omissions on the voter registration records pertaining to the election resulting from the poll clerks erroneously checking or failing to check the registration records as required by the provisions of section thirty-four, article one of this chapter.

3 At the same time that the checkup is made as required by this section, the clerk shall cancel the registration of each person who has failed to vote at least
once in any statewide, special or municipal election held
during a period covering two statewide primary and two
general elections as indicated by his or her registration
record. The clerk of the county commission shall notify
by mail each person whose registration is canceled for
failure to vote. The notice shall inform the voter that;

(a) In order to be reinstated he or she must:

(1) Register again, either in person at the county
clerk's office or by mail, according to the provisions of
section three or forty-one of this article; or

(2) Execute and file an affidavit of reinstatement of
registration at the same residence address not later than
thirty days before the next primary or general election,
except that reinstatement by affidavit shall not be
permitted if the voter registration in question was
canceled because the voter failed to make his first vote
in person as required by the provisions of subsection (e),
section forty-one of this article, and

(b) That the last day to register to vote in any election
is thirty days before that election.

A blank copy of the affidavit form shall be included
with the notice to the voter.

The clerk shall replace the registration card of any
voter who files a completed affidavit of reinstatement in
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.]
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 unable to pay the filing fee may qualify through the following petition process in lieu of payment of the filing fee.

2 The candidate shall file an oath with the appropriate office required under section eight of this article stating that he is unable to pay the filing fee due to a lack of financial resources. Such oath shall be filed not earlier than the second Monday in January next preceding the primary election day.

3 Upon receipt of the written oath the receiving officer shall provide the candidate with in-lieu-of-filing-fee petition forms and instructions on gathering the required signatures. The number of required signatures shall be four qualified voters for each whole dollar of the filing fee: Provided, That the filing fee shall be waived in whole and not in part. Only signatures of voters registered in the county, district or other political division represented by the office sought may be solicited. Solicitors of signatures shall also be residents of the county, district or other geographical entity represented by the office sought: Provided, however, That for offices to be filled by the voters of more than one county, separate petition forms shall be used for the signatures of qualified voters from each county.

4 No qualified voter forfeits his or her opportunity to vote
in the primary election by signing an in-lieu-of-filing-fee petition.

The candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The county clerk may not be required to determine the validity of a greater number of signatures than that required by this section.

Signatures obtained on an in-lieu-of-filing-fee petition shall not be counted toward the number of voters required to sign a nomination certificate in accordance with section twenty-three of this article.

The candidate shall file all in-lieu-of-filing-fee petitions with the required number of valid signatures with the county clerk or secretary of state, as the case may be, not later than the last date required by law for filing declarations of candidacies and payment of the filing fee.

The oath and forms required by this section shall be 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.

(a) Groups of citizens having no party organization may nominate candidates for public office otherwise than by conventions or primary elections. In such case, the candidate or candidates, jointly or severally, shall file a declaration with the secretary of state if the office is to be filled by the voters of more than one county, or with the clerk of the circuit court of the county if the office is to be filled by the voters of one county or political subdivision thereof; such declaration to be filed at least thirty days prior to the time of filing the certificate provided by section twenty-four of this article: Provided, That the deadline for filing the certificate for persons seeking ballot access as a candidate for the office of president or vice president shall be filed not later than the first day of August preceding the general election. At the time of filing of such declaration each candidate shall pay the filing fee required by law, and if such declaration is not so filed or the filing fee so paid, the certificate shall not be received by the secretary of state, or clerk of the circuit court, as the case may be.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on such certificate or certificates, may solicit or canvass duly registered voters residing within the county, district, or other political division represented by the office sought, but must first obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of ................., ss:

This certifies that ...................., a duly registered voter of this State; whose post-office address is ........, is hereby authorized to solicit and canvass duly registered voters residing in ........ (here place the county, district
or other political division represented by the office sought) to sign a certificate purporting to nominate ............
(here place name of candidate heading list on certificate) for the office of ........... and others, at the general election to be held on .................................., 19......
Given under my hand and the seal of my office this ........ day of .................................., 19......

Clerk, County Commission of ........... County.
The clerk of each county commission, upon proper application made as herein provided, shall issue such credentials and shall keep a record thereof.

(c) The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district or other political division represented by the office sought wherein such canvass or solicitation is made by the person or persons duly authorized. Such signatures need not all be on one certificate. The number of such signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for the office in the state, district, county or other political division for which the nomination is to be made, but in no event shall the number be less than twenty-five. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for such office shall constitute the entire vote. No signature on such certificate shall be counted unless it be that of a duly registered voter of the county, district or other political division represented by the office sought wherein such certificate was presented. It shall be the duty of those soliciting signatures to read to each voter whose signature is solicited the statement written on the certificate which gives notice that no person signing such certificate shall vote at any primary election to be held to nominate candidates for office to be voted for at the election to be held next after the date of signing such certificate.

(d) Such certificates shall state the name and residence of each of such candidates; that he is legally qualified to hold such office; that the subscribers are legally qualified and duly registered as voters and desire to vote for such...
candidates; and may designate, by not more than five
words, a brief name of the party which such candidates
represent and may adopt a device or emblem to be printed
on the official ballot. All candidates nominated by the
signing of such certificates shall have their names placed on
the official ballot as candidates, as if otherwise nominated
under the provisions of this chapter.

The secretary of state shall prescribe the form and
content of the nomination certificates to be used for
soliciting signatures. The content shall include the
language to be used in giving written and oral notice to each
voter that signing of the nominating certificate forfeits that
voter’s right to vote in the corresponding primary election.

Offices to be filled by the voters of more than one county
shall use separate petition forms for the signatures of
qualified voters for each county.

(e) The secretary of state, or the clerk of the circuit
court, as the case may be, may investigate the validity of
such certificates and the signatures thereon, and if upon
such investigation there may be doubt as to the legitimacy
and the validity of such certificate, he may request the
attorney general of the state, or the prosecuting attorney of
the county, to institute a quo warranto proceeding against
the nominee or nominees by certificate to determine his or
their right to such nomination to public office, and upon
request being made, the attorney general or prosecuting
attorney shall institute such quo warranto proceeding.

(f) Any person violating the provisions hereof, in
addition to penalties prescribed elsewhere for violation of
this chapter, shall be guilty of a misdemeanor, and, upon
conviction, shall be fined not more than one thousand
dollars, or confined in the county jail for not more than one
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.]
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.


A purchase of or contract for all supplies, equipment and materials and a contract for the construction of facilities by any authority, when the expenditure required exceeds the sum of two thousand five hundred dollars, shall be based on competitive sealed bids. Such bids shall be obtained by public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the service area of the authority. The second publication shall be made at least fourteen days before the final date for submitting bids. In addition to such publication, the notice may also be published by any other advertising medium the authority may consider advisable, and the authority may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board 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.

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 an emergency telephone system pursuant to section four, article six, chapter twenty-four, a county commission or the county commissions of two or more counties may, instead, establish an enhanced emergency telephone
system or convert an existing system to an enhanced emergency system. The establishment of such a system shall be subject to the provisions of article six, chapter twenty-four of this code.

(b) A county commission may impose a fee upon consumers of local exchange service within that county for an enhanced emergency telephone system. Such fee shall be utilized solely for the capital, installation and maintenance costs of the enhanced emergency telephone system. The county shall reduce such fee when the capital and installation costs have been fully recovered to the level necessary to offset recurring maintenance and dispatcher costs only. No such fee may be used for the costs associated with establishing, equipping, furnishing, operating or maintaining a county answering point.

(c) A county commission may contract with the telephone company or companies providing local exchange service within the county for such telephone company or companies to act as the billing agent or agents of the county commission for the billing of the fee imposed pursuant to subsection (b) of this section. The cost for such billing agent services may be included as a recurring maintenance cost of the enhanced 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.

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

(1) "County answering point" means a facility to which enhanced emergency telephone system calls for a county
are initially routed for response, and where county personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider or transferring the call to the appropriate provider.

(2) "Emergency services organization" means the organization established under article five, chapter fifteen of this code.

(3) "Emergency service provider" means any emergency services organization or public safety unit.

(4) "Emergency telephone system" means a telephone system which through normal telephone service facilities automatically connects a person dialing the primary emergency telephone number to an established public agency answering point, but does not include an enhanced emergency telephone system.

(5) "Enhanced emergency telephone system" means a telephone system which automatically connects the person dialing the primary emergency number to the county answering point and in which the telephone network system automatically provides to personnel receiving the call, immediately on answering the call, information on the location and the telephone number from which the call is being made, and upon direction from the personnel receiving the call routes such call to emergency service providers that serve the location from which the call is made.

(6) "Public agency" means the state, and any municipality, county, public district or public authority which provides or has authority to provide fire-fighting, police, ambulance, medical, rescue or other emergency services.

(7) "Public safety unit" means a functional division of a public agency which provides fire-fighting, police, medical, rescue or other emergency services.

(8) "Telephone company" means a public utility which is engaged in the provision of telephone service.
§24-6-3. Adoption of emergency telephone system plan.

(a) The public service commission shall, by the first day of January, one thousand nine hundred eighty, develop and adopt a comprehensive plan establishing the technical and operational standards to be followed in establishing and maintaining emergency telephone systems.

(b) In developing the comprehensive plan, the public service commission shall consult with telephone companies, and with the various public agencies and public safety units, including, but not limited to, emergency services organizations.

(c) The public service commission shall annually review with each operating telephone company their construction and switching replacements projections. During this review, the public service commission shall ensure that all new switching facilities will accommodate the emergency telephone system.

§24-6-4. Creation of emergency telephone systems.

(a) Upon the adoption by the public service commission of the comprehensive plan, the public agency may establish, consistent with the comprehensive plan, an emergency telephone system within its respective jurisdiction. Nothing herein contained, however, shall be construed to prohibit or discourage in any way the establishment of multijurisdiction or regional systems, and any emergency telephone system established pursuant to this article may include the territory of more than one public agency, or may include only a portion of the territory of a public agency. To the extent feasible, emergency telephone systems shall be centralized.

(b) Every emergency telephone system shall provide access to emergency services organizations, police, firefighting, and emergency medical and ambulance services and may provide access to other emergency services. Such system may also provide access to private ambulance services. The emergency telephone system shall provide the necessary mechanical equipment at the
established public agency answering point to allow deaf
persons access to the system. In those areas in which a
public safety unit of the state provides emergency
services, the system shall provide access to the public
safety unit.

(c) The primary emergency telephone number to the
extent possible, shall be uniform throughout the state.

(d) A telephone company in the normal course of
replacing or making major modifications to its switch-
ing equipment shall include the capability of providing
for the emergency telephone system and shall bear all
costs related thereto. All charges for other services and
facilities provided by the telephone company, including
the provision of distribution facilities and station
equipment, shall be paid for by the public agency or
public safety unit in accordance with the applicable
tariff rates then in effect for such services and facilities.
Other costs pursuant to the emergency telephone system
shall be allocated as determined by the public service
commission.

(e) All coin-operated telephones within the state shall,
by the first day of January, one thousand nine hundred
eighty-seven, be of a design that will permit a caller to
initiate, without first having to insert a coin (dial tone
first or post pay systems), local calls to the long distance
and directory assistance operators, calls to the
emergency telephone number answering point, if one
has been established in his or her local calling area, and
to other numbers for services as the telephone company
may from time to time make available to the public.

§24-6-5. Enhanced emergency telephone system
requirements.

(a) An enhanced emergency telephone system, at a
minimum, shall provide that:

(1) All the territory in the county, including every
municipal corporation in the county, which is served by
telephone company central office equipment that will
permit such a system to be established shall be included
in the system;
(2) Every emergency service provider that provides emergency service within the territory of a county participate in the system;

(3) Each county answering point be operated constantly;

(4) Each emergency service provider participating in the system maintain a telephone number in addition to the one provided for in the system; and

(5) If the county answering point personnel reasonably determine that a call is not an emergency the personnel provide the caller with the number of the appropriate emergency service provider.

(b) To the extent possible, enhanced emergency telephone systems shall be centralized.

(c) In developing an enhanced emergency telephone system, the county commission shall seek the advice of both the telephone companies providing local exchange service within the county and the local emergency providers.

§24-6-6. Enhanced emergency telephone system proposed requirement.

(a) If a county commission decides to adopt an enhanced emergency services telephone system it shall first prepare a proposal on the implementation of the system and shall hold a public meeting on the proposal to explain the system and receive comments from other public officials and interested persons. At least thirty but not more than sixty days before the meeting, the county commission shall place an advertisement in a newspaper of general circulation in the county notifying the public of the date, purpose and location of the meeting and the location at which a copy of the proposal may be examined.

(b) The proposal and the final plan adopted by the county commission shall specify:

(1) Which telephone companies serving customers in 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
telephone system or systems, the public service commis-
sion, upon application by such county commission or
telephone company, shall resolve such conflict. The
resolution of such conflict may include the modification
or suspension of any final plan adopted pursuant to
section six of this article or the ordering of the
centralization of emergency telephone systems and
enhanced emergency telephone systems.

§24-6-8. Limitation of liability.

A public agency participating in an emergency
telephone system or a county which has established an
enhanced emergency telephone system, and any officer,
agent or employee of such public agency or county is not
liable for damages in a civil action for injuries, death
or loss to persons or property arising from any act or
omission, except willful or wanton misconduct, in
connection with developing, adopting or approving any
final plan or any agreement made pursuant to this
article, or otherwise bringing into operation an emer-
gency telephone system or an enhanced emergency
telephone system pursuant to this article.

§24-6-9. Prohibitions and penalty.

(a) No person may knowingly use the telephone
number of an emergency telephone system or enhanced
emergency telephone system to report an emergency if
he or she knows that no such emergency exists.

(b) No person may disclose or use, for any purpose
other than for an emergency telephone system or
enhanced emergency telephone system, any information
contained in the data base used for either an emergency
telephone system or an enhanced emergency telephone
system established pursuant to this article.

(c) Any person who violates any provision of this
section is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than two hundred dollars
nor more than five thousand dollars, or imprisoned in
the county jail not more than one year, or both fined and
imprisoned.
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 eighteenth 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
15. Public Safety.
18. Education.

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.

The Legislature finds that many small businesses throughout the state are experiencing economic stagnation or decline, that high interest rates have caused small businesses in this state to suffer disproportionately in profitability and competition and that such high interest rates have fostered a serious increase in unemployment. The linked deposit program provided for by this article is intended to provide a statewide availability of lower-cost funds for lending purposes that will materially contribute to the economic revitalization of this state. Accordingly, it is declared to be the public policy of the state through the linked deposit program to create an availability of lower-cost funds to inject needed capital into the business community, sustain or improve business profitability, protect the jobs of citizens of this state and assist businesses located in any county declared to be a federal disaster area by the Federal Emergency Management Agency.

§12-1A-4. Applications for loan priority; loan package.

(a) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small businesses. The lending institution shall apply all usual lending standards to determine the
creditworthiness of each eligible small business.

(b) An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities. Whoever knowingly makes a false statement concerning such application shall be prohibited from entering into the linked deposit loan program.

(c) In considering which eligible small businesses should receive reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area in which the business is located, including whether the business is located in a county declared to be a federal disaster area by the Federal Emergency Management Agency, and the number of jobs to be created or preserved by the receipt of such loan.

(d) The eligible financial institution shall forward to the state treasurer a linked deposit loan package, in the form and manner as prescribed by the state treasurer. The package shall include such information as required by the state treasurer, including the amount of the loan requested and the number of jobs to be created or sustained by each eligible small business. The institution shall certify that each applicant is an eligible small business, and shall, for each business, certify the present borrowing rate applicable 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.

In view of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness, resulting from enemy attack, sabotage or other hostile action, or from fire, flood, earthquakes or other natural or man-made causes and in order to ensure that preparations of this state will be adequate to deal with such disasters, and generally to provide for the common defense and to protect the public peace, health and safety and to preserve the lives and property of the people of the
state, it is hereby found and declared to be necessary: (1) To create a state emergency services agency and to authorize the creation of local and regional organizations for emergency services in the political subdivisions of the state; (2) to confer upon the governor, and upon the executive heads of governing bodies of the political subdivisions of the state the emergency powers provided herein; (3) to provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to the carrying out of emergency services functions; (4) and to establish and implement a comprehensive emergency service plan to deal with such disasters.

It is further declared to be the purpose of this article and the policy of the state that all emergency services functions of this state be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, of other states and localities and of private agencies of every type, so that the most effective preparation and use may be made of the nation's manpower, resources and facilities for dealing with any disaster that may occur.

§15-5-5. General powers of the governor.

The governor shall have general direction and control of the office of emergency services and shall be responsible for the carrying out of the provisions of this article and, in the event of disaster beyond local control, may assume direct operational control over all or any part of the emergency services functions within this state.

In performing his duties under this article, the governor is authorized to cooperate with the federal government, other states and private agencies in all matters pertaining to the provisions of emergency services for this state and the nation.

In performing his duties under this article to effect its policy and purpose, the governor is further authorized and empowered:

(1) To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this article within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government.
(2) To prepare and implement a comprehensive plan and program for the provision of emergency services in this state, such plan and program to be integrated into and coordinated with comparable plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of such plans and programs by the political subdivisions of this state, such plans to be integrated into and coordinated with the state plan and program to the fullest possible extent.

(3) In accordance with such state plan and program, to procure supplies and equipment, to institute training and public information programs, to take all other preparatory steps including the partial or full mobilization of emergency services organizations in advance of actual disaster and to ensure the furnishing of adequately trained and equipped emergency services personnel in time of need.

(4) To make such studies and surveys of industries, resources and facilities in this state as may be necessary to ascertain the capabilities of the state for providing emergency services and to plan for the most efficient emergency use thereof.

(5) On behalf of the state, to enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of this state.

(6) To delegate the administrative authority vested in him under this article, to provide for the delegation or transfer or both of the authority vested in the director under the provisions of this article, to any other person as the governor in his discretion may direct, and to provide for the subdelegation of any such authority.

(7) To appoint a disaster recovery team composed of departmental heads, members of the executive, political subdivision representatives, technicians, members of the public and other representatives, the composition of which team shall reflect the character and extent of the disaster itself.

(8) To appoint, in cooperation with local authorities, metropolitan area directors when practicable.

(9) To cooperate with the president and the heads of the armed forces, the civil defense agency of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters
pertaining to the civil defense of the state and nation, including the direction and control of (a) blackouts and practice blackouts, air raid drills, mobilization of emergency services and civil defense forces and other tests and exercises; (b) warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith; (c) the effective screening or extinguishing of all lights and lighting devices and appliances; (d) shutting off water mains, gas mains, electric power connections and the suspension of all other utility services; (e) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior and subsequent to drills or attack; (f) public meetings or gatherings; and (g) the evacuation and reception of the civilian population.

CHAPTER 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 which shall be comprised of (a) an employment term for teachers, and (b) an instructional term for pupils.

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

3 Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days: Provided, That the minimum instructional term may be decreased, by order of the state superintendent of schools, in any West Virginia county declared to be a federal disaster area by the Federal Emergency Management Agency. Instructional and noninstructional activities may be scheduled during the same employment day. The
instructional term shall commence no earlier than the first day of September and shall terminate no later than the eighth day of June.

Noninstructional days in the employment term may be used for making up canceled instructional days, curriculum development, preparation for opening and closing of the instructional term, in-service and professional training of teachers, teacher-pupil-parent conferences, professional meetings and other related activities. In addition, each board may designate and schedule for teachers and service personnel a maximum of four days to be used by the employee outside the school environment. However, no more than seven noninstructional days, except holidays, may be scheduled prior to the first day of January in a school term.

Notwithstanding any other provisions of the law to the contrary, if the board has canceled instructional days equal to the difference between the total instructional days scheduled and one hundred seventy-eight, each succeeding instructional day canceled shall be rescheduled, utilizing only the remaining noninstructional days, except holidays, following such cancellation, which are available prior to the second day before the end of the employment term established by such county board.

Where the employment term overlaps a teacher's or service personnel's participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, such participation for not more than five of the noninstructional days of the employment term.

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

The public schools shall be open for the full instructional term to all persons who have attained the entrance age as stated in section five, article two and section eighteen, article five, chapter eighteen of this code: Provided, That persons over the age of twenty-one may enter only those programs or classes authorized by the state board of education and deemed appropriate by the county board of education conducting any such program or class: Provided, however, That authorization for such programs or classes shall in no way serve to affect or eliminate programs or classes offered by county boards of education at the adult level for which fees are charged to support such programs or classes.

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.

(a) At the request of the governor or the appropriate state agency or authority, the authority may lend money to such office, agency or authority for the acquisition,

NOTE: This section was also amended by S.B. 403, which passed subsequent to this act.
construction, improvement or alteration of projects for electrical power generating facilities, natural gas transmission lines, coal processing plants and other energy projects.

(b) At the request of the department of commerce or the office of community and industrial development, the authority may lend money to any person or entity for the acquisition, construction, improvement or alteration of any project relative to export development, farm development, job development, forest development, disaster recovery development including, but not limited to, the establishment of new economic development programs for any counties declared to be a federal disaster area by the Federal Emergency Management Agency.

(c) At the request of the West Virginia automobile assistance corporation, the authority may lend money to any person or entity for the acquisition, construction, improvement or alteration of any project relative thereto.

(d) At the request of the West Virginia industrial and trade jobs development corporation, the authority may lend money to any person or entity for acquisition, construction, improvement or alteration of any project relative thereto.

(e) A loan shall not be made unless the authority is reasonably satisfied that the project will produce revenues sufficient, together with any other revenues pledged, to meet the principal and interest on the loan, other costs, expenses and charges in connection with the loan and other charges or obligations of the project which may be prior or equal to the loan, promptly as they become due; that the project is otherwise soundly financed; that the loan application requirements of section eight of this article have been satisfied; that the project will be owned and operated by the state of West Virginia. A loan made pursuant to this subsection shall not exceed the project costs as determined by the authority. A loan shall be secured in the manner required by the authority, shall be repaid in a period and bear interest at a rate as determined by the authority, which interest rate may be decreased or increased so that it shall in no event be less than the rate paid by the authority on notes, renewal notes or bonds issued to fund the loan, and shall have such terms and conditions as are required by the authority, all which shall
be set forth in a loan agreement and related documents as 
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 
may exercise all powers necessary or appropriate to carry 
out and effectuate its corporate purpose, including, but not 
limited to, the following:

2. (1) To make or participate in the making of federally 
insured construction loans to sponsors of land development 
for residential or temporary housing for occupancy by 
eligible persons and families or to sponsors of residential or 
temporary housing for occupancy by eligible persons and 
families. Such loans shall be made only upon determination 
by the housing development fund that construction loans 
are not otherwise available, wholly or in part, from private 
lenders upon reasonably equivalent terms and conditions;

3. (2) To make temporary loans, with or without interest, 
but with such security for repayment as the housing 
development fund determines reasonably necessary and 
practicable, from the operating loan fund, if created, 
established, organized and operated in accordance with the 
provisions of section nineteen of this article, to defray 
development costs to sponsors of land development for 
residential or temporary housing for occupancy by persons 
and families of low and moderate income or residential or 
temporary housing construction for occupancy by persons 
and families of low and moderate income which is eligible 
or potentially eligible for federally insured construction 
loans, federally insured mortgages, federal mortgages, or 
uninsured construction loans or uninsured mortgage loans;

4. (3) To make or participate in the making of long-term 
federally insured mortgage loans to sponsors of residential 
or temporary housing for occupancy by eligible persons and 
families, or to eligible persons and families, who may 
purchase or construct such residential or temporary 
housing. Such loans shall be made only upon determination 
by the housing development fund that long-term mortgage 
loans are not otherwise available, wholly or in part, from 
private lenders upon reasonably equivalent terms and 
conditions;
(4) To establish new housing and housing development projects for counties declared to be in a federal disaster area by the Federal Emergency Management Agency;

(5) To accept appropriations, gifts, grants, bequests and devises, and to utilize or dispose of the same to carry out its corporate purpose;

(6) To make and execute contracts, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;

(7) To collect reasonable fees and charges in connection with making and servicing its loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services. Such fees and charges shall be limited to the amounts required to pay the costs of the housing development fund, including operating and administrative expenses, and reasonable allowances for losses which may be incurred;

(8) To invest any funds not required for immediate disbursement in any of the following securities:

(i) Direct obligations of or obligations guaranteed by the United States of America or for the payment of the principal and interest on which the full faith and credit of the United States of America is pledged;

(ii) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; Tennessee Valley Authority; United States Postal Service; Inter-American Development Bank; International Bank for Reconstruction and Development; Small Business Administration; Washington Metropolitan Area Transit Authority; General Services Administration; Federal Financing Bank; Federal Home Loan Mortgage Corporation; Student Loan Marketing Association; Farmer's Home Administration; the Federal National Mortgage Association or the Government National Mortgage Association; or any bond, debenture, note, participation certificate or other similar obligation to the extent such obligations are guaranteed by the Government National Mortgage Association or Federal
National Mortgage Association or are issued by any other federal agency and backed by the full faith and credit of the United States of America;

(iii) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes, preliminary loan notes, or project notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(iv) Certificates of deposit, time deposits, investment agreements, repurchase agreements or similar banking arrangements with a member bank or banks of the federal reserve system or a bank the deposits of which are insured by the Federal Deposit Insurance Corporation, or its successor, or a savings and loan association or savings bank the deposits of which are insured by the Federal Savings and Loan Insurance Corporation, or its successor, or government bond dealers reporting to, trading with and recognized as primary dealers by a Federal Reserve Bank: Provided, That such investments shall only be made to the extent insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or to the extent that the principal amount thereof shall be fully collateralized by obligations which are authorized investments for the housing development fund pursuant to this section;

(v) Direct obligations of or obligations guaranteed by the state of West Virginia;

(vi) Direct and general obligations of any other state, municipality or other political subdivision within the territorial United States: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency; and

(vii) Any bond, note, debenture or annuity issued by any corporation organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation's securities are listed on
Provided, however, That (1) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, and (2) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (3) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dun & Bradstreet, Best's or Moody's;

(viii) If entered into solely for the purpose of reducing investment, interest rate, liquidity or other market risks in relation to obligations issued or to be issued or owned or to be owned by the housing development fund, options, futures contracts (including index futures but exclusive of commodities futures, options or other contracts), standby purchase agreements or similar hedging arrangements listed by a nationally recognized securities exchange or a corporation described in (vii) above;

(ix) Certificates, shares or other interests in mutual funds, unit trusts or other entities registered under section eight of the United States investment company act of 1940, but only to the extent that the terms on which the underlying investments are to be made prevent any more than a minor portion of the pool which is being invested in to consist of obligations other than investments permitted pursuant to this section; and

(x) To the extent not inconsistent with the express provisions of this section, obligations of the West Virginia state board of investments or any other obligation authorized as an investment for the West Virginia state board of investments under article six, chapter twelve of this code or for a public housing authority under article fifteen, chapter sixteen of this code;

(9) To sue and be sued;

(10) To have a seal and alter the same at will;

(11) To make, and from time to time, amend and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;

(12) To appoint such officers, employees and
consultants as it deems advisable and to fix their
compensation and prescribe their duties;
(13) To acquire, hold and dispose of real and personal
property for its corporate purposes;
(14) To enter into agreements or other transactions with
any federal or state agency, any person and any domestic or
foreign partnership, corporation, association or
organization;
(15) To acquire real property, or an interest therein, in
its own name, by purchase or foreclosure, where such
acquisition is necessary or appropriate to protect any loan
in which the housing development fund has an interest and
to sell, transfer and convey any such property to a buyer
and, in the event of such sale, transfer or conveyance cannot
be effected with reasonable promptness or at a reasonable
price, to lease such property to a tenant;
(16) To sell, at public or private sale, any mortgage or
other negotiable instrument or obligation securing a
construction, rehabilitation, improvement, land
development, mortgage or temporary loan;
(17) To procure insurance against any loss in connection
with its property in such amounts, and from such insurers,
as may be necessary or desirable;
(18) To consent, whenever it deems it necessary or
desirable in the fulfillment of its corporate purpose, to the
modification of the rate of interest, time of payment or any
installment of principal or interest, or any other terms, or
mortgage loan, mortgage loan commitment, construction
loan, rehabilitation loan, improvement loan, temporary
loan, contract or agreement of any kind to which the
housing development fund is a party;
(19) To make and publish rules and regulations
respecting its federally insured mortgage lending,
uninsured mortgage lending, construction lending,
rehabilitation lending, improvement lending and lending to
defray development costs and any such other rules and
regulations as are necessary to effectuate its corporate
purpose;
(20) To borrow money to carry out and effectuate its
corporate purpose and to issue its bonds or notes as
evidence of any such borrowing in such principal amounts
and upon such terms as shall be necessary to provide
sufficient funds for achieving its corporate purpose, except
that no notes shall be issued to mature more than ten years
from date of issuance and no bonds shall be issued to mature
more than fifty years from date of issuance;
(21) To issue renewal notes, to issue bonds to pay notes
and, whenever it deems refunding expedient, to refund any
bonds by the issuance of new bonds, whether the bonds to
be refunded have or have not matured except that no such
renewal notes shall be issued to mature more than ten years
from date of issuance of the notes renewed and no such
refunding bonds shall be issued to mature more than fifty
years from the date of issuance;
(22) To apply the proceeds from the sale of renewal
notes or refunding bonds to the purchase, redemption or
payment of the notes or bonds to be refunded;
(23) To provide technical services to assist in the
planning, processing, design, construction, or
rehabilitation or improvement of residential and temporary
housing for occupancy by eligible persons and families or
land development for residential and temporary housing
for occupancy by eligible persons and families;
(24) To provide consultative project assistance services
for residential and temporary housing for occupancy by
eligible persons and families and for land development for
residential and temporary housing for occupancy by
eligible persons and families and for the residents thereof
with respect to management, training and social services;
(25) To promote research and development in scientific
methods of constructing low cost residential and
temporary housing of high durability;
(26) With the proceeds from the issuance of notes or
bonds of the housing development fund, including, but not
limited to, mortgage finance bonds, or with other funds
available to the housing development fund for such
purpose, to participate in the making of or to make loans to
mortgagees approved by the housing development fund and
take such collateral security therefor as is approved by the
housing development fund and to invest in, purchase,
acquire, sell or participate in the sale of, or take
assignments of, notes and mortgages, evidencing loans for
the construction, rehabilitation, improvement, purchase or
refinancing of residential and temporary housing in this
state: Provided, That the housing development fund shall
obtain such written assurances as shall be satisfactory to it that the proceeds of such loans, investments or purchases will be used, as nearly as practicable, for the making of or investment in long-term federally insured mortgage loans or federally insured construction loans, uninsured mortgage loans or uninsured construction loans, for residential and temporary housing for occupancy by eligible persons and families in this state or that other moneys in an amount approximately equal to such proceeds shall be committed and used for such purpose;

(27) To make or participate in the making of uninsured construction loans to sponsors of land development for residential or temporary housing for occupancy by eligible persons and families or to sponsors of residential or temporary housing for occupancy by eligible persons and families, or to eligible persons and families who may construct such housing. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(28) To make or participate in the making of long-term uninsured mortgage loans to sponsors of residential or temporary housing for occupancy by eligible persons and families, or to eligible persons and families who may purchase or construct such residential housing. Such loans shall be made only upon determination by the housing development fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(29) To obtain options to acquire real property, or any interest therein, in its own name, by purchase, or lease, or otherwise, which is found by the housing development fund to be suitable, or potentially suitable, as a site, or as part of a site, for the construction of residential or temporary housing; to hold such real property; to make loans to finance the performance of land development activities on or in connection with any such real property or to perform land development activities on or in connection with any such real property; to sponsor the development of residential and temporary housing for occupancy by eligible persons and families on such real property; and to
FLOOD RECOVERY

sell, transfer and convey, lease or otherwise dispose of such
real property, or lots, tracts or parcels of such real property,
or residential or temporary housing, for such prices, upon
such terms, conditions and limitations, and at such time or
times as the housing development fund shall determine, to
sponsors of residential or temporary housing: Provided,
That if the housing development fund shall determine that
any such real property or any lots, tracts or parcels of such
real property are not at any time or times needed for present
or future residential or temporary housing, the housing
development fund may sell, transfer and convey, lease or
otherwise dispose of the same, to such purchasers or lessees,
for such prices, upon such terms, conditions and
limitations, and for such uses and purposes as the housing
development fund shall determine;

(30) To make loans, with or without interest, but with
such security for repayment as the housing development
fund determines reasonably necessary and practicable from
the land development fund, if created, established,
organized and operated in accordance with the provisions
of section twenty-a of this article, to sponsors of land
development, to defray development costs and other costs
of land development;

(31) To exercise all of the rights, powers and authorities
of a public housing authority as set forth and provided in
article fifteen, chapter sixteen of this code, in any area or
areas of the state which the housing development fund shall
determine by resolution to be necessary or appropriate;

(32) To make or participate in the making of loans to
eligible persons and families for the purpose of
rehabilitating or improving existing residential and
temporary housing, or to owners of existing residential or
temporary housing for occupancy by eligible persons and
families for the purpose of rehabilitating or improving such
residential or temporary housing and, in connection
therewith, to refinance existing loans involving the same
property. Such loans shall be made only upon
determination by the housing development fund that
rehabilitation or improvement loans are not otherwise
available, wholly or in part, from private lenders upon
reasonably equivalent terms and conditions: and

(33) Whenever the housing development fund deems it
necessary in order to exercise any of its powers set forth in
subdivision (29) of this section, and upon being unable to agree with the owner or owners of real property or interest therein sought to be acquired by the fund upon a price for acquisition of private property not being used or operated by the owner in the production of agricultural products, to exercise the powers of eminent domain in the acquisition of such real property or interest therein in the manner provided under chapter fifty-four of this code, and the purposes set forth in subdivision (29) of this section are hereby declared to be public purposes for which private property may be taken. For the purposes of this section, the determination of "use or operation by the owner in the production of agricultural products" means that the principal use of such real estate is for the production of food and fiber by agricultural production other than forestry, and the fund shall not initiate or exercise any powers of eminent domain without first receiving an opinion in writing from both the governor and the commissioner of agriculture of this state that at the time the fund had first attempted to acquire such real estate or interest therein, such real estate or interest therein was not in fact being used or operated by the owner in the production of agricultural 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 goal of owning a home, a center of family life and family independence deeply cherished and highly valued.
3 (2) In many parts of the state there is a large number of single-family residential units that cannot presently be marketed because of high interest rates and adverse economic conditions, or because of having been declared to be a federal disaster area by the Federal Emergency Management Agency.
In addition, the state and its inhabitants are suffering high unemployment and low income because of the depressed state of the housing market and because of its inability to attract new business. This situation adversely affects potential home buyers, home builders, skilled craftsmen, realtors and their employees and other citizens. These conditions also reduce state revenues and frustrate the laudable aspirations of many West Virginians to enjoy the pleasures of home ownership and pursue productive employment, or because of having been declared to be a federal disaster area by the Federal Emergency Management Agency.

By the cooperative efforts of our citizens there is a large pool of resources held in trust by the state for the sole benefit of West Virginians, including funds reserved for workers injured in the course of employment.

Some of these funds, particularly the workers' compensation fund, are invested under the actuarial assumption of a yield less than that of current market investments. Yet the current yield on some of these funds, and particularly the workers' compensation fund, is lower than the actuarially assumed interest rate, and has been for at least three years.

The common good does not require that all of these funds be invested so as to yield the very highest investment return offered in the market, especially when the current rate of market interest is:

(a) So high that it stifles the legitimate aspirations and attainable dreams of so many West Virginians and West Virginia businesses; and

(b) So high that it encourages the flight of capital accumulated by West Virginians for the benefit of West Virginians to national markets where the only consideration is the highest rate of return.

In these circumstances, prudence does not require that the state board of investments seek the highest rate of return on all investments. Rather, prudence requires that in investing federally tax-free funds the state board of investments should seek a rate of return commensurate with its public charter. Furthermore, prudence demands that the board immediately seek fiscally sound investments within the state of West Virginia which offer sound security
and directly serve the hopes and aspirations in housing and employment of the inhabitants of this state.

(8) The survival and renewal of a vibrant market for single-family residential units and the opportunity to attract new businesses to the state is a sound and preferred investment for the resources held in trust by this state for its citizens. Such investments deserve precedence and encouragement, even at the expense of foregoing the highest rate of investment return, an investment return which the tax paying investor might gain in the current market place but which prudence dictates that the state board of investments need not pursue.

(9) The success of the undertakings required by this article will be amply demonstrated by: (a) The increased financial stability of the state, (b) the contribution which will occur when the dreams of hundreds of West Virginians are realized, (c) the intrinsic worth of enhancing the cooperative spirit of the inhabitants of this state in employment and housing, and (d) the enhancement of revenue to the state which will be generated by the commerce West Virginia seeks to stimulate. In addition, the rate of return realized by these funds will be at least as high as the actuarial assumptions, and, given the rates of return demonstrated over the past three years, probably higher than the current rate of return.

§31-18B-3. Housing development fund to make available state mortgage and industrial development investment pool funds for mortgages on single-family residential units; limitations upon type and size of such mortgages.

(a) The housing development fund shall make available at the interest rate specified in section six of this article, one half of the moneys from the state mortgage and industrial development investment pool for investment in mortgages on single-family residential units, twenty-five percent of which shall be designated and restricted, for a period of twelve months, to new and never occupied single-family residential units which shall, if not so used, revert to investments in other nonrestricted mortgages. For the purposes of this article, a single-family residential unit means a detached unit on a separate piece of land used
solely for the housing of one family, and only one family, 
which family owns the dwelling and the land or has a 
mortgage thereupon, and also includes townhouses or row 
houses used by a family as a residential dwelling, and 
owned by the family.

(b) Loans made by the housing development fund from 
the state mortgage and industrial development investment 
pool are to be made solely for the purpose of purchasing real 
estate upon which is situate a single-family unit, or for the 
construction of a single-family residential unit upon real 
estate by the buyer of such unit to provide housing for only 
himself and his family, or for the purpose of the payment of 
al loan theretofore made for the construction of a single-
family residential unit, or for the purpose of purchasing real 
estate upon which is situate a single-family residential unit 
and making additions or improvements thereto: Provided, 
That none of these loans shall be used to refinance existing 
loans, except construction loans or loans made to such units 
situated in a federal disaster area as so declared by the 
Federal Emergency Management Agency. Each such loan 
must be secured by a first mortgage or first deed of trust 
upon such real property. Such mortgage or deed of trust 
shall be held by the housing development fund or its 
assignee.

(c) Loans made pursuant to the provisions of this 
section may not exceed eighty-five percent of the appraised 
value of the real estate and single-family residential unit: 
Provided, That if the loan is for the purchase of a single-
family residential unit for the purpose of making additions 
and improvements thereto, such loan shall be no more than 
eighty-five percent of the appraised value of the property 
including such improvements when made, as estimated by 
an appraiser retained by the fund.

(d) In no event may a loan obtained pursuant to this 
section be for an amount greater than seventy-five 
thousand dollars.

(e) Mortgage loans made pursuant to the provisions of 
this section shall be insured for at least twenty percent of 
the amount of the loan by either an agency of the federal 
government or a private mortgage insurance company 
licensed in the state.
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.

There shall be a state board of health, to be known as the West Virginia board of health. The state board of health shall consist of sixteen members, who shall be appointed by the governor, by and with the advice and consent of the Senate. Three members of the board shall be physicians or surgeons holding the degree of doctor of medicine, one shall be a dentist, one shall be an osteopathic physician, one shall be a registered nurse, one shall be a pharmacist, three shall be from mental health disciplines, one shall be an administrator of a licensed hospital, one shall be an optometrist, one shall be a chiropractor and three shall be representative citizens, none of which representative citizens shall be an employee of, spouse of an employee of, or receive any other financial benefit from any health facility located in this state, and none of whom shall be a member of, or the spouse, child, or parent of, or connected in any way with, any of the professions named.

All persons appointed to membership on the state board of health shall be citizens of this state and shall have been such citizens and residents of the state for at least five
years prior to the date of their appointment. Every profes-
tional member of the said board shall be duly licensed
to practice such profession on the date of appointment
and shall have been so licensed and in active practice of
the profession for at least five years immediately preced-
ing the date of such appointment. Before appointing any
professional member, the governor shall request any pro-
fessional society of the profession practiced by the
proposed appointee to furnish to the governor a full and
complete report concerning the qualifications and suitabil-
ity of the proposed appointee. All members of the board
shall be appointed for terms of five years each: Provided,
That persons appointed prior to the effective date of this
section shall continue until the completion of their terms
of original appointment: Provided, however, That in the
case of the initial appointments of the representative
citizens, one shall be designated to serve for a term of
one year, one for a term of two years and one for a term
of four years; and in the case of the initial appointments
of the members from mental health disciplines, one shall
be designated to serve for a term of two years, one for a
term of three years and one for a term of five years.
Thereafter, the term of each new appointee shall be five
years except in the case of any vacancy on the board which
shall be filled by the governor by appointment for the
unexpired term. No member shall be eligible for more
than two terms.

No more than nine of the members of the board shall
belong to the same political party. At least one member,
but not more than four, shall be appointed from each
congressional district. No person shall be eligible for
appointment to membership on the state board who is a
member of any political party executive committee, or
who holds any public office or employment under the
federal government or under the government of this
state or any of its political subdivisions.

No member may be removed from office by the gover-
nor except for official misconduct, incompetence, neglect
of duty or gross immorality and then only in the manner
prescribed by law for the removal by the governor of state
elective officers: Provided, That the expiration, suspen-
sion or revocation of the professional license of any pro-
fessional member of the board shall be cause for removal.

The members of the board shall be paid the sum of
thirty-five dollars for each day actually served in atten-
dance at official meetings of the board. Each member
shall be reimbursed for travel at the rate of fifteen cents
per mile if by private automobile and actual cost if travel
is by common carrier. Each member shall also be reim-
bursed for other actual expenses incurred in the perfor-
mance of the duties of his office; except that in the event
the expenses are paid, or are to be paid, by a third party,
the member shall not be reimbursed by the state.

The director of health shall serve as secretary to the
board, but shall not be entitled to vote. He shall be in
charge of the offices of the board and shall be responsible
to the board for the preparation of reports and the col-
lection and dissemination of data and other public infor-
mation relating to the development of drafts and other
materials concerning rules and regulations promulgated
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.]
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

CHAPTER 16. PUBLIC HEALTH.

Article
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 association, whether public or private, county or municipal, shall install or establish any system or method of drainage, water supply, sewage or excreta disposal, or solid waste disposal without first obtaining a written permit to install or establish such system or method from the state director of health or his authorized representative. All such systems or methods shall be installed or established in accordance with plans, specifications and instructions issued by the state director of health or which have been approved in writing by the state director of health or his authorized representative: Provided, That any person, firm, corporation or association, which shall install, or cause or direct to be installed, any system or method of sewage or excreta disposal, septic system or sewage treatment plant serving three or more single-family residences, or any privately owned multi-unit residences composed of more than two residential units or commercial enterprise, shall enter into a performance bond, with corporate surety, payable to the state department of health, in an amount equivalent to the projected construction costs of such
private system, which performance bond shall be conditioned upon the completion and acceptance or final approval by the appropriate public agency of such private sewage system according to plans, specifications or instructions approved in writing by the state director of health or his authorized representative: Provided, however, that any person, firm, company, corporation or association, which shall install or cause or direct to be installed, any system or method of sewage or excreta disposal, septic system or sewage treatment plant serving three or more single-family residences, or any privately owned multi-unit residence composed of more than two residential units or commercial enterprise, shall enter into a performance bond, with corporate surety, payable to the state department of health, in an amount sufficient to guarantee the satisfactory operation and maintenance of such septic system, sewage treatment plant or other sewage disposal system, for a period of not less than one (1) year after completion of construction. The state director of health shall determine the bonds required for both the construction and operation and maintenance of such systems and the director of health is hereby authorized and directed, upon written request of the board, to enforce requirements of this section: Provided further, that in the event of the payment of proceeds of any performance bond required by this section, the state department of health shall be required to use the proceeds to remedy or to assist in remedying any deficiency in the operation or maintenance of such system or plant or to assist in the completion of the construction project.

Whenever the state director of health or his authorized representative finds upon investigation that any system or method of drainage, water supply, sewage or excreta disposal, or solid waste disposal, whether publicly or privately owned, has not been installed in accordance with plans, specifications and instructions issued by the state director of health or approved in writing by the state director of health or his authorized representative, the state director of health or his duly authorized representative may issue an order requiring the owner of such system or method to make alterations as may be necessary to correct the improper condition. Such alterations shall be made within a reasonable time which shall not exceed thirty days, unless
a time extension is authorized by the state director of health
or his duly authorized representative.

The presence of sewage, excreta or solid waste being
disposed of in a manner not approved by the state director
of health or his authorized representative shall constitute
prima facie evidence of the existence of a condition
endangering public health.

The personnel of the state department of health shall be
available to consult and advise with any person, firm,
company, corporation, institution or association, whether
publicly or privately owned, county or municipal, or public
service authority, as to the most appropriate design, method
of operation or alteration of any such system or method.

Any person, firm, company, corporation, institution or
association, whether public or private, county or municipal,
who shall violate any provisions of this section shall be
deemed guilty of a misdemeanor, and, upon conviction
thereof, shall be punished by a fine of not less than twenty-
five dollars nor more than five hundred dollars. The
continued failure or refusal of such convicted person, firm,
company, corporation, institution or association, whether
public or private, county or municipal, to make the
alterations necessary to protect the public health required
by the state director of health or his duly authorized
representative shall constitute a separate, distinct and
additional offense for each twenty-four hour period of such
failure or refusal, and, upon conviction thereof, the violator
shall be fined not less than twenty-five dollars nor more
than five hundred dollars for each such conviction:

Provided, That none of the provisions contained in this
section shall apply to those commercial or industrial wastes
which are subject to the regulatory control of the West
Virginia department of natural resources or the West
Virginia air pollution control commission.

Magistrates shall have concurrent jurisdiction with the
circuit courts of this state for violations of any provisions of
this section.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE
AND GAS SERVICES.

§16-13A-1. Legislative findings.
§16-13A-1. Legislative findings.

1 The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been unable to obtain public utility services. To further this effort, and to ensure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference
with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best interest of the public for each county commission to review current technology available and consider consolidating or centralizing the management of public service districts within its county or multi-county area to achieve efficiency of operations. The Legislature also finds that additional guidelines should be imposed on the creation of new public service districts and that county commissions shall dissolve inactive public service districts as hereinafter provided. The Legislature also finds that the public service commission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts.


The jurisdiction of the public service commission relating to public service districts shall be expanded to include the following powers, and such powers shall be in addition to all other powers of the public service commission set forth in this code:

(a) To study, modify, approve, deny or amend the plans created under section one-b of this article for consolidation or merger of public service districts and their facilities, personnel or administration;

(b) To petition the appropriate circuit court for the removal of a public service district board member or members; and

(c) To create by general order a separate division within the public service commission to provide assistance to public service districts in technological, operational, financial and regulatory matters.

§16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of
such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification:

Provided, That within ninety days of the effective date of this section each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study shall have one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the department of health and the department of natural resources shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission shall have six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules and regulations promulgated by the public service commission and such order shall be implemented by the county commission.

§16-13A-1c. General purpose of districts.

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water or sewerage services or gas
distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words “public service properties,” when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as “water facilities”), (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as “sewer facilities” or “landfills”) or (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to 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 motion by order duly adopted or upon the recommendation of the public service commission, propose the creation of such public service district within such county, setting forth in such order a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district, or twenty-five percent of the registered voters who reside within the limits of such proposed public service district within one or more counties may petition for the creation thereof, which petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section, no new public service district shall be created under this section without the written consent and approval of the public service commission, which approval and consent shall be in 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
less than twenty days from the date of such action. If the
territory proposed to be included is situated in more than
one county, the county commission, when fixing a date of
hearing, shall provide for notifying the county commission
and clerk thereof of each of the other counties into which
the territory extends of the date so fixed. The clerk of the
county commission of each county in which any territory in
the proposed public service district is located shall cause
notice of such hearing and the time and place thereof, and
setting forth a description of all of the territory proposed to
be included therein to be given by publication as a Class I
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the
publication area for such publication shall be by
publication in each city, incorporated town or municipal
corporation if available in each county in which any
territory in the proposed public service district is located.
The publication shall be at least ten days prior to such
hearing. In all cases where proceedings for the creation of
such public service districts are initiated by petition as
aforesaid, the person filing the petition shall advance or
satisfactorily indemnify the payment of the cost and
expenses of publishing the hearing notice, and otherwise
the costs and expenses of such notice shall be paid in the
first instance by the county commission out of contingent
funds or any other funds available or made available for
that purpose. In addition to the notice required herein to be
published, there shall also be posted in at least five
conspicuous places in the proposed public service district, a
notice containing the same information as is contained in
the published notice. The posted notices shall be posted not
less than ten days before the hearing.

All persons residing in or owning or having any interest in
property in such proposed public service district shall have
an opportunity to be heard for and against its creation. At
such hearing the county commission before which the
hearing is conducted shall consider and determine the
feasibility of the creation of the proposed district. If the
county commission determines that the construction or
acquisition by purchase or otherwise and maintenance,
operation, improvement and extension of public service
properties by such public service district will be conducive
to the preservation of public health, comfort and convenience of such area, the county commission shall by order create such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of such area or that the creation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create the district as amended. If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by expansion, merger or other means, it shall refuse to enter an order creating the proposed district and shall enter an order expanding, merging or consolidating the area with an existing public service district, in accordance with rules and regulations adopted by the public service commission for such purpose: Provided, That no expansion of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such expanded service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, expanding, merging or consolidating the district: Provided, however, That within ten days after the entry of an order creating, expanding or merging or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules and regulations relating to such filings and the approval, disapproval or modification of county commission orders for creating, expanding, merging or consolidating districts.

The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to
include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or establish or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: *Provided,* That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply with like effect as if a district were being created. The commission shall at all times attempt to bring about the expansion or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: *Provided, however,* That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article. A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it shall thereafter be a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes.
Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district:

Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the department of natural resources and the department of health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district, nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after such board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand shall be entitled
to appoint one member of the board, and each such city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed shall thereby become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district shall equal or exceed three, then no further members shall be appointed to the board and the members shall be and constitute the board of the district.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district, which three members shall become members of and constitute the board of the district without any further act or proceedings.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three, and the additional member or members shall thereupon become members of the board; and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, shall be and constitute the board.
of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, shall be conclusively considered to be the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules and regulations promulgated by the public service commission.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four, and the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chairman and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of
§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
defense, against the party or parties who petitioned the
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
section three, article nine-a, chapter six of this code. A majority of the members constituting the board also constitute a quorum to do business. The members of the board are not personally liable or responsible for any obligations of the district or the board but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and such change shall be effective from and after filing an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located.

§16-13A-5. General manager of board.

The board may employ a general manager to serve a term of not more than five years and until his successor is employed, and his compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he shall perform and exercise such other powers and duties as may be conferred upon him by the board. Such general manager shall be chosen without regard to his political affiliations and upon the sole basis of his administrative and technical qualifications to manage public service properties and affairs of the district and he may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water or sewer service from a municipal water or sewer system or another public service district may, as an
alternative to hiring its own general manager, elect to
permit the general manager of the municipal water or sewer
system or public service district from which such water or
sewer service is purchased provide professional
management to the district, if the appropriate municipality
or public service board agrees to provide such assistance.
The general manager shall receive reasonable
compensation for such service.

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

The board of such districts shall have the supervision and
control of all public service properties acquired or
constructed by the district, and shall have power, and it
shall be its duty, to maintain, operate, extend and improve
the same. All contracts involving the expenditure by the
district of more than five thousand dollars for construction
work or for the purchase of equipment and improvements,
extensions or replacements, shall be entered into only after
notice inviting bids shall have been published as a Class I
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the
publication area for such publication shall be as specified in
section two of this article in the county or counties in which
the district is located. The publication shall not be less than
ten days prior to the making of any such contract. To the
extent allowed by law, in-state contractors shall be given
first priority in awarding public service district contracts. It
shall be the duty of the board to ensure that local in-state
labor shall be utilized to the greatest extent possible when
hiring laborers for public service district construction or
maintenance repair jobs. It shall further be the duty of the
board to encourage contractors to use American-made
products in their construction to the extent possible. Any
obligations incurred of any kind or character shall not in
any event constitute or be deemed an indebtedness within
the meaning of any of the provisions or limitations of the
constitution, but all such obligations shall be payable solely
and only out of revenues derived from the operation of the
public service properties of the district or from proceeds of
bonds issued as hereinafter provided. No continuing
contract for the purchase of materials or supplies or for
furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years.

§16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections.

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished.

Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given
notice of any said delinquency by certified mail, return
receipt requested. The board may, under reasonable rules
and regulations promulgated by the public service
commission, shut off and discontinue water or gas services
to all delinquent users of either water or gas facilities, or
both.

In the event that any publicly or privately owned utility,
city, incorporated town, other municipal corporation or
other public service district included within the district
owns and operates separately either water facilities or
sewer facilities, and the district owns and operates the other
kind of facilities, either water or sewer, as the case may be,
then the district and such publicly or privately owned
utility, city, incorporated town or other municipal
corporation or other public service district may covenant
and contract with each other to shut off and discontinue the
supplying of water service for the nonpayment of sewer
service fees and charges: Provided, That any contracts
entered into by a public service district pursuant to this
section shall be submitted to the public service commission
for approval. Any public service district providing water
and sewer service to its customers shall have the right to
terminate water service for delinquency in payment of
either water or sewer bills. Where one public service district
is providing sewer service and another public service
district or a municipality included within the boundaries of
the sewer district is providing water service, and the district
providing sewer service experiences a delinquency in
payment, the district or the municipality included within
the boundaries of the sewer district that is providing water
service, upon the request of the district providing sewer
service to the delinquent account, shall terminate its water
service to the customer having the delinquent sewer
account: Provided, however, That any termination of water
service must comply with all rules, regulations and orders
of the public service commission.

Any district furnishing sewer facilities within the district
may require, or may by petition to the circuit court of the
county in which the property is located, compel or may
require the department of health to compel all owners,
tenants or occupants of any houses, dwellings and buildings
located near any such sewer facilities, where sewage will
flow by gravity or be transported by such other methods approved by the department of health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the department of health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state: Provided, That if the public service district determines that the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for such changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the department of health; maintenance and operation costs for such extra installation should be reflected in the user's charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported
by such other methods approved by the department of
health from such house, dwelling or building into such
sewer facilities, the district may charge, and such owner,
tenant or occupant shall pay the rates and charges for
services established under this article only after thirty-day
notice of the availability of the facilities has been received
by the owner.

All delinquent fees, rates and charges of the district for
either water facilities, sewer facilities or gas facilities are
liens on the premises served of equal dignity, rank and
priority with the lien on such premises of state, county,
school and municipal taxes. In addition to the other
remedies provided in this section, public service districts
are hereby granted a deferral of filing fees or other fees and
costs incidental to the bringing and maintenance of an
action in magistrates court for the collection of delinquent
water, sewer or gas bills. If the district collects the
delinquent account, plus reasonable costs, from its
customer or other responsible party, the district shall pay to
the magistrate the normal filing fee and reasonable costs
which were previously deferred. In addition, each public
service district may exchange with other public service
districts a list of delinquent accounts.

Anything in this section to the contrary notwithstanding,
any establishment, as defined in section two, article five-a,
chapter twenty, now or hereafter operating its own sewage
disposal system pursuant to a permit issued by the
department of natural resources, as prescribed by section
seven, article five-a, chapter twenty of this code, is exempt
from the provisions of this section.

§16-13A-11. Accounts; audit.

The general manager, under direction of the board, shall
install and maintain a proper system of accounts, in
accordance with all rules, regulations or orders pertaining
thereto by the public service commission, showing receipts
from operation and application of the same, and the board
shall at least once a year cause such accounts to be properly
audited: Provided, That such audit may be any audit by an
independent public accountant completed within one year
of the time required for the submission of the report:
Provided, however, That if the district is required to have
its books, records and accounts audited annually by an independent certified public accountant as a result of any covenant in any board resolution or bond instrument, a copy of such audit may be submitted in satisfaction of the requirements of this section, and is hereby found, declared and determined to be sufficient to satisfy the requirements of article nine, chapter six of this code pertaining to the annual audit report by the state tax commission. A copy of the audit shall be forwarded within thirty days of submission to the county commission and to the public service commission.

The treasurer of each public service district shall keep and preserve all financial records of the public service district for ten years, and shall at all times have such records readily available for public inspection. At the end of his term of office, the treasurer of each public service district shall promptly deliver all financial records of the public service district to his successor in office. Any treasurer of a public service district who knowingly or willfully violates any provision of this section is guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail not more than ten days, or both.

§16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.

In any case where a public service district owns a water, sewer or gas system, and all the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer or gas system to any municipality or privately owned water, sewer or gas system, or to any water, sewer or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of
construction of such water, sewer or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer or gas system is located to be placed in the general funds of such county commission.

§16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.

This article shall constitute full and complete authority for the creation of public service districts and for carrying out the powers and duties of same as herein provided. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals, shall be required in connection therewith except as may be prescribed by this article: Provided, That all functions, powers and duties of the public service commission of West Virginia, the state department of health and the state water resources board shall remain unaffected by this article. Every district organized, consolidated, merged or expanded under this article is declared to be a public instrumentality created and functioning in the interest and for the benefit of the public, and its property and income and any bonds issued by it shall be exempt from taxation by the state of West Virginia, and the other taxing bodies of the state: Provided, however, That the board of any such district may use and apply any of its available revenues and income for the payment of what such board determines to be tax or license fee equivalents to any local taxing body and in any proceedings for the issuance of bonds of such district may reserve the right to annually pay a fixed or computable sum to such taxing bodies as such tax or license fee equivalent.

§16-13A-25. Borrowing and bond issuance; procedure.

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by
the provisions of section thirteen, twenty or twenty-four of this article, without the prior consent and approval of the public service commission. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four of this code, when a public service district is seeking to acquire or construct public service property.

Sixty days prior to making formal application for said certificate, the public service district shall prefile with the public service commission its plans and supporting information for said project and shall publish a Class II legal advertisement in a newspaper or newspapers of general circulation in each city, incorporated town or municipal corporation if available in the district, which legal advertisement shall state:

(a) The amount of money to be borrowed, or the amount of revenue bonds to be issued: Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;

(b) The interest rate and terms of the loan or bonds: Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;

(c) The public service properties to be acquired or constructed, and the cost of same;

(d) The anticipated rates which will be charged by the district: Provided, That if the rates are an estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and

(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four of this code, or may withhold such consent and approval for the protection of the public interest.
In the event of disapproval, the reasons therefor shall be 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, create a division within its staff which shall provide legal, engineering, financial and accounting advice and assistance to public service districts in operational, financial and regulatory matters, and may perform or participate in the studies required under section one-b, 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 provisions of this chapter may charge and collect a fee for the expense of all water or sewer system inspections or tests when requested and conducted as a part of its
authority conferred by this chapter. The amount of such charge for expense of inspection or test shall not exceed a total fee of thirty-five dollars regardless of the mileage traveled or time consumed and such charge shall be submitted to and approved by the state department of health: Provided, That no charge for expense of inspection or testing may be made by any local board of health unless it is the agency making the regular inspection or 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.

The county or municipal health officer appointed by any local board of health created pursuant to the provisions of this article shall be the executive officer of such board of health. Under the supervision of the board, he or she shall administer the provisions of this article, all other laws of this state relating to public health and applicable to his or her county or municipality, and the rules, regu-
lations and orders of such county or municipal board of
health and of the state board of health, so far as such
rules, regulations and orders are applicable to his or her
county or municipality.

Such health officer shall attend, but not vote, at all
meetings of his or her county or municipal board of
health. He or she shall act as secretary of such board and
shall be in charge of its offices. He or she shall supervise
and direct the activities of county or municipal health
services, employees and facilities except that the duties
of such health officer shall not include the rendering of
medical or surgical services on an individual basis to
wards of the county or municipality. The county health
officer or his or her designated representative shall de-
dtermine when corrections have been made sufficient to
warrant removal of any restriction or limitation placed
by an employee under his or her supervision.

The duties of such health officer may include the ren-
dering of medical or surgical services on an individual
basis to inmates of any public institution operated or
maintained by any county commission or municipality.
The county commission or municipality shall reimburse
the local board of health an agreed amount for the provi-
sion of these services. The health officer shall file reports
in a timely manner, but no less frequently than once each
twelve months with the county commission or municipali-
ity, as the case may be, naming the medical or surgical
service rendered and the person to whom rendered.

It shall be the duty of every practicing physician to
report to the municipal or county health officer, where
there is such official, immediately on diagnosis, those
diseases or conditions for which a report is required by
the state board of health and in the manner specified by
the state health director which may arise or come under
the physician's treatment. Any health officer receiving
such reports shall make to the state director of health
a weekly report in a manner specified by the director of
health.
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 utilizing sulfites as a preservative on salad bars shall prominently display a public notice in the following words:

"NOTICE TO PERSONS USING SALAD BAR: This establishment applies sulfites as a preservative on items in the salad bar."

8 The state director of health is responsible for administering this section. He may delegate the duties to any county boards of health or combined local boards of health.

12 The state health department shall publish standards for such notices, assuring a uniform size and color of the notices to be purchased by the owner of any such establishment.
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 special fund to be known as the indigent care fund.

2 (b) Moneys from the following sources shall be paid into the indigent care fund:

3 (1) For the state's fiscal year beginning in the year one thousand nine hundred eighty-six, the Legislature shall make an appropriation to the indigent care fund in an amount to be determined by it which shall be in addition to its general appropriation to the state's medicaid program; and

4 (2) On the first day of July, one thousand nine hundred eighty-six, the West Virginia health care cost review authority may assess hospitals under the jurisdiction of the authority, with the exception of hospitals owned and operated by the state government, an aggregate amount of three million dollars: Provided,
That if the authority makes such an assessment, the authority shall certify that such assessment is for a one-year period and is necessary for the health and well-being of all the citizens of the state and provide the reasons therefor.

(c) Each hospital assessed pursuant to subdivision (2), subsection (b) of this section shall be assessed on a pro rata basis based upon a three year average of net revenues less expenditures and taxes for each hospital's one thousand nine hundred eighty-three, one thousand nine hundred eighty-four and one thousand nine hundred eighty-five fiscal years weighted by the hospital's ratio of West Virginia gross medicaid revenues to gross patient revenues for the same three-year period. Payment of this assessment shall be remittable no later than the fifteenth day of August, one thousand nine hundred eighty-six.

(d) All moneys paid into the indigent care fund shall be used to supplement the Legislature's general appropriation to the state's medicaid program in order that the state may receive corresponding matching funds from the federal government and the state's medicaid program shall be utilized to finance the amount of inpatient and outpatient acute care hospital services practicable.

(e) If it is determined by the United States department of health and human services that federal medicaid funds will not be forthcoming to match all or part of the funds assessed from hospitals, that portion of the hospital assessment for which no matching federal funds will be forthcoming will not be collected from hospitals and any such hospital assessment already collected will be returned to said hospitals.

(f) Any balance remaining in the indigent care fund at the end of the state's fiscal year shall not revert to the state treasury, but shall remain in the indigent care fund and be used consistent with subsection (d) of this section.

(g) The West Virginia health care cost review authority shall administer and promulgate rules and regula-
tions to implement the provisions of this section: Provided, That in so doing the authority shall seek the
advice of the department of human services: Provided, however, That nothing in this article shall be
construed to give the West Virginia health care cost review authority any jurisdiction over the medicaid
program or its operations.

§16-29C-5. Effective date and termination date.

This article shall be effective from passage, and, notwithstanding the provisions of section four of this article, shall terminate on the thirtieth day of June, one 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:
§29-3-5a. Hazardous substance emergency response training programs.

(a) Within one hundred twenty days of the effective date of this section, the state fire commission shall promulgate rules and regulations pursuant to chapter twenty-nine-a of this code establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the state fire marshal.

(b) For the purposes of this section, “hazardous substance” means any “hazardous substance” as defined in subsection (g), section three, article thirty-one, chapter sixteen of this code, any “chemical substances and materials” listed in the rules or regulations promulgated by the commissioner of labor pursuant to section eighteen, article three, chapter twenty-one of this code, and any “hazardous waste” as defined in subdivision (7), section three, article five-e, chapter twenty of this code.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

§55-7-17. Aid by trained hazardous substance response personnel; immunity from civil liability; definitions.

No person trained in a qualified program of hazardous substance emergency response certified by the state fire marshal pursuant to rules and regulations promulgated by authority of subsection (a), section five-a, article three, chapter twenty-nine of this code, who in good faith renders advice or assistance at the scene of
an actual or threatened discharge of any hazardous substance and receives no remuneration for rendering such advice or assistance, is liable for any civil damages as the result of any act or omission in rendering such advice or assistance: Provided, That the exemption from liability for civil damages of this section shall be extended to any such person who receives reimbursement for out-of-pocket expenses incurred in rendering such advice or assistance or compensation from his regular employer for the time period during which he was actually engaged in rendering such advice or assistance but shall not be extended to any such person who by his act or omission caused or contributed to the cause of such actual or threatened discharge of any hazardous substance.

For the purposes of this section, "hazardous substance" means any "hazardous substance" as defined in subsection (g), section three, article thirty-one, chapter sixteen of this code; any "chemical substances and materials" listed in the rules or regulations promulgated by the commissioner of labor pursuant to section eighteen, article three, chapter twenty-one of this code; and any "hazardous waste" as defined in subdivision (6), 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.

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the state board of insurance should be continued and reestablished but shall be known and referred to as the state board of risk and insurance management. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the state board of insurance shall continue to exist until the first day of July, one thousand nine hundred ninety-two, but shall be known and referred to as the 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.

The following definitions of kinds of insurance are not mutually exclusive and, if reasonably adaptable thereto,
a particular coverage may be included under one or more of such definitions:

(a) Life insurance—Life insurance is insurance on human lives including endowment benefits, additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits for disability and annuities.

(b) Accident and sickness—Accident and sickness insurance is insurance against bodily injury, disability or death by accident or accidental means, or the expense thereof, or against disability or expense resulting from sickness, and insurance relating thereto. Group credit accident and health insurance may also include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purposes of this definition, involuntary loss of employment means the debtor loses employment income (salary or wages) as a result of unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout or termination by employer for other than willful or criminal misconduct. Any or all of the above mentioned perils may be included in an insurance policy, at the discretion of the policyholder.

(c) Fire—Fire insurance is insurance on real or personal property of every kind and interest therein, against loss or damage from any or all hazard or cause; and against loss consequential upon such loss or damage, other than noncontractual liability for any such loss or damage. Fire insurance shall also include miscellaneous insurance as defined in paragraph (12), subdivision (e), of this section.

(d) Marine—Marine insurance is insurance:

(1) Against any and all kinds of loss or damage to vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in
respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land (above or below ground), or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builders' risks and all personal property floater risks;

(2) Against any and all kinds of loss or damage to person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles);

(3) Against any and all kinds of loss or damage to precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise;

(4) Against any and all kinds of loss or damage to bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion or any or all of them are the only hazards to be covered;

(5) Against any and all kinds of loss or damage to piers, wharves, docks and ships, excluding the risks of fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion and each of them;

(6) Against any and all kinds of loss or damage to other aids to navigation and transportation, including, dry docks and marine railways, dams and appurtenant facilities for control of waterways; and

(7) Marine protection and indemnity insurance, which
is insurance against, or against legal liability of the in-
sured for, loss, damage or expense arising out of, or inci-
dent to, the ownership, operation, chartering, mainte-
nance, use, repair or construction of any vessel, craft or
instrumentality in use in ocean or inland waterways,
including liability of the insured for personal injury, ill-
ness or death or for loss of or damage to the property of
another person.

(e) Casualty—Casualty insurance includes:

(1) Vehicle insurance, which is insurance against loss
of or damage to any land vehicle or aircraft or any draft
or riding animal or to property while contained therein or
thereon or being loaded therein or therefrom, from any
hazard or cause, and against any loss, liability or expense
resulting from or incident to ownership, maintenance or
use of any such vehicle, aircraft or animal; together with
insurance against accidental death or accidental injury to
individuals, including the named insured, while in, en-
tering, alighting from, adjusting, repairing or cranking, or
caused by being struck by any vehicle, aircraft or draft
or riding animal, if such insurance is issued as a part of in-
surance on the vehicle, aircraft or draft or riding animal;

(2) Liability insurance, which is insurance against
legal liability for the death, injury or disability of any
human being, or for damage to property; and provisions
for medical, hospital, surgical, disability benefits to in-
jured persons and funeral and death benefits to depend-
ents, beneficiaries or personal representatives of persons
killed, irrespective of legal liability of the insured, when
issued as an incidental coverage with or supplemental to
liability insurance;

(3) Burglary and theft insurance, which is insurance
against loss or damage by burglary, theft, larceny, rob-
bery, forgery, fraud, vandalism, malicious mischief, con-
fiscation, or wrongful conversion, disposal or concealment,
or from any attempt at any of the foregoing, including
supplemental coverages for medical, hospital, surgical and
funeral benefits sustained by the named insured or other
person as a result of bodily injury during the commission
of a burglary, robbery or theft by another; also insurance
against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(4) Personal property floater insurance, which is insurance upon personal effects against loss or damage from any cause;

(5) Glass insurance, which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(6) Boiler and machinery insurance, which is insurance against any liability and loss or damage to property or interest resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured;

(7) Leakage and fire extinguishing equipment insurance, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water mains, pipes and containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus;

(8) Credit insurance, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured. Credit insurance shall include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purpose of this definition, involuntary loss of employment means the debtor loses employment income (salary or wages) as a result of unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout or termination by employer for other than willful or criminal misconduct; any, or all of the above mentioned perils may be included in an insurance policy, at the discretion of the policyholder;

(9) Malpractice insurance, which is insurance against
legal liability of the insured, and against loss, damage or
expense incidental to a claim of such liability, and includ-
ing medical, hospital, surgical and funeral benefits to
injured persons, irrespective of legal liability of the in-
sured arising out of the death, injury or disablement of
any person, or arising out of damage to the economic
interest of any person, as the result of negligence in ren-
dering expert, fiduciary or professional service;
(10) Entertainment insurance, which is insurance in-
demnifying the producer of any motion picture, televi-
sion, radio, theatrical, sport, spectacle, entertainment or
similar production, event or exhibition against loss from
interruption, postponement or cancellation thereof due to
death, accidental injury or sickness of performers, par-
ticipants, directors or other principals;
(11) Mine subsidence insurance as provided for in
article thirty of this chapter; and
(12) Miscellaneous insurance, which is insurance
against any other kind of loss, damage or liability prop-
erly a subject of insurance and not within any other kind
of insurance as defined in this chapter, if such insurance
is not disapproved by the commissioner as being contrary
to law or public policy.
(f) Surety—Surety insurance includes:
(1) Fidelity insurance, which is insurance guaranteeing
the fidelity of persons holding positions of public or pri-
ivate trust;
(2) Insurance guaranteeing the performance of con-
tracts, other than insurance policies, and guaranteeing
and executing bonds, undertakings, and contracts of
suretyship: Provided, That surety insurance does not in-
clude the guaranteeing and executing of bonds by pro-
fessional bondsmen in criminal cases, or by individuals
not in the business of becoming a surety for compensation
upon bonds;
(3) Insurance indemnifying banks, bankers, brokers,
financial or moneyed corporations or associations against
loss, resulting from any cause, of bills of exchange, notes,
bonds, securities, evidences of debt, deeds, mortgages,
warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while they are being transported in armored motor vehicles or by messenger, but not including any other risks of transportation or navigation, and also insurance against loss or damage to such an insured's premises or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief; or any attempt to commit such crimes; and

(4) Title insurance, which is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, defective title, invalidity or adverse claim to title.

CHAPTER 89

(Com. Sub. for H. B. 1520—By Mr. Speaker Mr. Albrignt 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 corpora-
tions, 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.
23. Fraternal Benefit Societies.
24. Hospital Service Corporations, Medical Service Corporations and
   Dental Service Corporations.
ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-13. Fees and charges.

(a) Except where it is otherwise specially provided, the commissioner shall demand and receive the following fees from all insurers: For annual fee for each license, two hundred dollars; for receiving and filing annual reports, one hundred dollars; for valuation of policies of life insurers organized under the laws of this state, one and one-half cents for each one thousand dollars of insurance; for valuation of policies of life insurers organized under the laws of any other state licensed to transact insurance in this state the rate for each one thousand dollars of insurance valued as is imposed by the other state upon any similar insurer organized under the laws of this state licensed to transact insurance in the other state; for filing certified copy of articles of incorporation, fifty dollars; for filing copy of its charter, fifty dollars; for filing statements preliminary to admission, one hundred dollars; for filing any additional paper required by law or furnishing copies thereof, one dollar; for every certificate of valuation, copy of report or certificate of condition of company to be filed in any other state, fifteen dollars; for each licensed agent, twenty-five dollars. The commissioner may by regulation set reasonable charges for printed forms for the annual statements required by law. He may sell at cost publications purchased by, or printed on behalf of the commissioner.

(b) Such fees and charges collected by the commissioner under the provisions of this section or elsewhere in this chapter and designated for use by the commissioner for the operation of the department of insurance or for the purposes of this section, shall be paid into a special revenue account, hereby created in the state treasury, to be expended and used by the commissioner, upon his requisition and after appropriation by the Legislature, for the operation of the department of insurance.

ARTICLE 6. THE INSURANCE POLICY.
§33-6-34. Fee for form and rate filing.

A fee of ten dollars for every form filing and ten dollars for every rate filing shall be submitted with each filing. If a form filing or rate filing is made on behalf of more than one insurer, other than a filing made by a rating organization licensed by the commissioner pursuant to section six, article twenty of this chapter, the fee shall be submitted as if the filing were made by each individual insurer. Fees submitted pursuant to this section shall not be refunded if the form filing or rate filing, for which the fee was submitted, is disapproved in whole or in part by the commissioner. The refiling of a form filing or rate filing previously disapproved by the commissioner shall be considered a new filing for the purposes of the filing fee: Provided, That any request by the commissioner for additional information pertaining to a form filing shall not be considered a new filing for purposes of the filing fee. All fees collected pursuant to this section shall be used by the commissioner for the 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.

The fee for an agent’s license shall be twenty-five dollars as provided in section thirteen, article three of this chapter, the fee for a solicitor’s license shall be twenty-five dollars, and the fee for a broker’s license shall be twenty-five dollars, except that when any other state imposes a tax, bond, fine, penalty, license fee or other obligation or prohibition on agents resident in this state, the same tax, bond, fine, penalty, license fee or other obligation or prohibition shall be imposed upon
agents (where licensing of nonresident agents is permitted under this article) or brokers of such other state licensed or seeking a license in this state. All fees and moneys so collected shall be used for the purposes set forth in section thirteen, article three of this chapter.

§33-12-13. Licensing of excess line brokers.

(a) Any licensed insurance agent determined by the commissioner to be competent and trustworthy for the purpose, may be licensed as an excess line broker.

(b) The license fee shall be two hundred dollars, all fees so collected are to be used for the purposes set forth in section thirteen, article three of this chapter.

(c) Prior to issuance of the license, the applicant therefor shall file with the commissioner and thereafter maintain in force for so long as the license or any renewal thereof remains in effect, a bond in favor of the state of West Virginia in the penal sum of two thousand dollars, with an authorized corporate surety approved by the commissioner, conditioned that he will conduct business under the license in accordance with this article, that he will promptly remit the taxes provided by section sixteen of this article, and that he will properly account to the person entitled thereto for funds received by him through transactions under the license. No bond shall be terminated unless at least thirty days' prior written notice thereof is filed with the commissioner.

§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.

(a) Every excess line broker licensed pursuant to the provisions of this article shall make a return annually, under oath, on or before the first day of March to the commissioner of the gross amount of premiums charged the insureds by the insurers for insurance procured by such licensee, pursuant to such license during the previous calendar year, together with the amount of tax
due thereon. The annual tax required to be paid, under the provisions of this section, shall be a sum equal to two percent of the gross premiums received on the gross business procured by such licensee on subjects of insurance, resident, located or to be performed in this state and obtained pursuant to the provisions of this article, including any so-called dividends on participating insurance policies applied in reduction of premiums, less premiums returnable for cancellation. All such taxes paid to the commissioner shall be paid by him into the state treasury for the benefit of the state fund.

(b) On and after the first day of January, one thousand nine hundred eighty-seven, the annual two percent tax imposed by this section shall cease, expire and be of no further force or effect whatsoever thereafter, but the final payment of tax in respect of the two percent tax levied by this section and being for the previous calendar year of one thousand nine hundred eighty-six, shall be payable and shall be remitted to the commissioner by the first day of March, one thousand nine hundred eighty-seven, as provided by this section. All of the other general provisions of this section in respect of return requirements and other general administration provisions are retained for the administration purposes of the premium taxes remaining under 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.

For the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and additional revenue for volunteer and part-volunteer fire companies and departments, an additional annual premium tax is hereby imposed and required to be paid, on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth quarter, in respect of which taxes shall be due and 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
28 All such taxes paid to the commissioner pursuant to
29 this section shall be paid by him into a special account
30 in the state treasury, designated “municipal pensions
31 and protection fund,” and after appropriation by the
32 Legislature, shall be distributed in accordance with the
33 provisions of subsection (c), section fourteen-d, article
34 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 representa-
15 tive 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
ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-6. Rating organizations.

(a) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of casualty insurance or subdivisions thereof, or for such kinds of fire and marine insurance or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith (1) a copy of its constitution, its articles of agreement or association or its certificates of incorporation, and of its bylaws, rules and regulations governing the conduct of its business, (2) a list of its members and subscribers, (3) the name and address of a resident of this state as attorney-in-fact upon whom notices or orders of the commissioner or process affecting such rating organization may be served and (4) a statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for the license shall be one hundred dollars, and the fee shall be in lieu of all other fees, licenses or taxes to which a rating organization might otherwise be subject, all fees so collected to be used for the purposes specified in section thirteen, article three of this chapter. Licenses issued pursuant to this section may be suspended or revoked...
by the commissioner, after notice and hearing, in the event the rating organization ceases to meet the requirements of this article. Every rating organization shall notify the commissioner promptly of every change in (1) its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, (2) its list of members and subscribers and (3) the name and address of the resident of this state designated as attorney-in-fact by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(b) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of casualty insurance or subdivision thereof, or for any kind of fire and marine insurance or subdivision or class of risk or a part or combination thereof, or any kind of surety insurance or subdivision thereof, for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner. If, after notice and hearing, the commissioner finds that the rule or regulation is unreasonable in its application to subscribers, he shall order that the rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer’s application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If, after notice and hearing, the commissioner finds that the insurer has been refused admission to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the
action of the rating organization was justified, he shall
make an order affirming its action.

(c) No rating organization shall adopt any rule the
effect of which would be to prohibit or regulate the
payment of dividends, savings or unabsorbed premium
deposits allowed or returned by insurers to their
policyholders, members or subscribers.

(d) Cooperation among rating organizations or among
rating organizations and insurers in rate making or in
other matters within the scope of this article is hereby
authorized, provided the filings resulting from such
cooperation are subject to all the provisions of this
article which are applicable to filings generally. The
commissioner may review such cooperative activities
and practices, and if after a hearing he finds that any
such activity or practice is unfair or unreasonable or
otherwise inconsistent with the provisions of this article,
he may issue a written order specifying in what respects
such activity or practice is unfair or unreasonable or
otherwise inconsistent with the provisions of this article,
and requiring the discontinuance of such activity or
practice.

(e) Any rating organization for casualty, marine or
surety insurance may provide for the examination of
policies, daily reports, binders, renewal certificates,
endorsements or other evidences of insurance, or the
cancellation thereof, and may make reasonable rules
governing their submission. The rules shall contain a
provision that in the event any insurer does not within
sixty days furnish satisfactory evidence to the rating
organization of the correction of any error or omission
previously called to its attention by the rating organi-
ization, it shall be the duty of the rating organization to
notify the commissioner thereof. All information so
submitted for examination shall be confidential. Such
services for fire insurance shall be governed by the
provisions of section ten, article seventeen of this
chapter.

(f) Any rating organization may subscribe for or
purchase actuarial, technical or other services, and these
services shall be available to all members and subscribers without discrimination.

ARTICLE 21. RECIPROCAL INSURERS.

§33-21-12. Process and venue; annual fee.

(a) Concurrently with the filing of the application provided for by the terms of section six of this article, the attorney shall file with the commissioner an instrument in writing, executed by him for said subscribers, conditioned that upon the issuance of the license provided for in section seven of this article any action, suit or other proceeding arising out of any insurance contract or policy issued under such license, may be brought in the county of this state wherein the property insured was situated either at the date of the policy or at the time when the right of action accrued, or in the county of this state wherein the person insured had a legal residence at the date of his death or at the time the right of action accrued, and that service of any process or notice may be had upon the secretary of state in all actions, suits or other proceedings in this state arising out of such policies, contracts, agreements or other business of insurance transacted under such license, and that said secretary of state may accept service of any such process or notice.

(b) Such service or acceptance of service shall be valid and binding upon the attorney and upon all subscribers exchanging at any time reciprocal or interinsurance contracts through the attorney. Two copies of such process or notice, in addition to the original, shall be furnished the secretary of state, and he shall file one copy, forward one copy to the attorney and return the original with his acceptance of service or for return of service. But no process or notice shall be served on the secretary of state or accepted by him less than ten days before the return day thereof. Where the principal office of the attorney is located in this state, service of process may be had upon all subscribers by serving same upon the attorney at said office. Service of process shall not be had upon said subscribers or any of them in any suit or other proceeding in this state except in the manner
provided in this section, and any action, suit, or other proceeding may be begun and prosecuted against or defended by them under the name or designation adopted by them.

(c) The attorney shall pay to the secretary of state an 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.

Each such company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article ten no assessment shall be levied against any former member of a farmers' mutual fire insurance company who is no longer a member of the company at the time the order to show cause was issued, article eleven (unfair practices and frauds), article twelve (agents, brokers and solicitors) except that the agents' license fee shall be five dollars, article twenty-six (West Virginia Insurance Guaranty Association Act) and article thirty (mine subsidence insurance) except that under the provisions of section six, article thirty, a farmers' mutual insurance company shall have the option of offering mine subsidence coverage to all of its policyholders but shall not be required to do so; but only to the extent these provisions are not inconsistent with the provisions of this article.

§33-22-16. Fees.

Such company at the time of making its annual report shall pay to the commissioner a filing fee of twenty-five dollars, all fees so collected to be used for the purposes specified in section thirteen, article three of this chapter.
No other fees or taxes shall be levied against such companies except the agent's license fee and the expenses of examination thereof by the commissioner.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-29. Fees; exemption of funds and assets from taxation.

(a) Each society shall pay to the commissioner an annual license fee of fifty dollars and a fee of twenty-five dollars for filing the annual statement of the society, all fees so collected to be used for the purposes specified in section thirteen, article three of this chapter.

(b) Every society licensed under this article is hereby declared to be a charitable and benevolent institution, and all of its funds and assets shall be exempt from all state, county, district and municipal taxes except taxes on real property and office equipment.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS AND DENTAL SERVICE CORPORATIONS.

§33-24-4. Exemptions; applicability of other laws.

§33-24-5. Licenses; name of corporation.

§33-24-4. Exemptions; applicability of other laws.

Every such corporation is hereby declared to be a scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions, as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner) except that under section nine of article two examinations shall be conducted at least once every four years, article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article ten (rehabilitation and liquidation), article eleven (unfair practices and frauds), article twelve (agents, brokers and solicitors) except that the agent's license fee shall be five dollars, section three-c,
article sixteen (group accident and sickness insurance),
section three-d, article sixteen (medicare supplement)
and article twenty-eight (individual accident and
sickness insurance minimum standards); and no other
provision of this chapter shall apply to such corporations
unless specifically made applicable by the provisions of
this article. If, however, any such corporation shall be
converted into a corporation organized for a pecuniary
profit, or if it shall transact business without having
obtained a license as required by section five of this
article, it shall thereupon forfeit its right to these
exemptions.

§33-24-5. Licenses; name of corporation.

(a) No such corporation shall enter into any contract
with a subscriber until it has obtained from the
commissioner a license as provided in this section.
Application for a license shall be made on forms to be
prescribed and furnished by the commissioner.

(b) The application shall be accompanied by a copy of
the following documents: (1) Certificate of incorporation;
(2) bylaws; (3) contracts between the corporation and
participating hospitals, physicians, dentists or other
health agencies; (4) proposed contracts to be issued to
subscribers, setting forth the hospital, medical or dental
service, to which subscribers are entitled, and the table
of rates to be charged for such service; and (5) financial
statement showing the amount of contributions paid, or
agreed to be paid, to the corporation for working capital,
the name or names of each contributor and the terms
of each contribution.

(c) Within thirty days after receipt of an application,
the commissioner shall, upon payment to him of a
license fee of two hundred dollars, issue a license
authorizing the corporation to transact business in this
state in the area to be served by it, if he is satisfied (1)
that the applicant is incorporated in this state under the
provisions of article one, chapter thirty-one of this code,
as a bona fide nonprofit corporation, (2) that the
contracts between the corporation and participating
hospitals, physicians, dentists and other health agencies
contain all the terms required by section seven of this article, (3) that the working capital available to the corporation will be sufficient to pay all operating expenses, other than payment for hospital, medical or dental services, for a reasonable period after the issuance of the license, and (4) that the proposed plan will serve the best interests of all of the people of the area in which the corporation intends to operate, regardless of their race, color or economic status. Any license so issued may be renewed annually upon payment to the commissioner of a renewal fee of two hundred dollars.

(d) The term of such license, renewal, refusal to license, revocation, suspension or penalty in lieu thereof, shall be governed by the provisions of sections eight, nine, ten and eleven, article three of this chapter, in the same manner that these sections are applicable to insurers generally.

(e) No such corporation shall include in its name the words "insurance," "casualty," "surety," "health and accident," "accident and sickness," "mutual," or any other words descriptive of the insurance business; nor shall its name be so similar to that of any insurer which was licensed to transact insurance in this state when such corporation was formed, as to tend, in the opinion of the commissioner, to confuse the public.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-7. Licenses.

(a) Before it may issue any contract to a subscriber, a corporation desiring to establish, maintain and operate a direct health care plan must first obtain from the commissioner a license as provided in this section.

(b) Applications for an original license shall be made on forms prescribed and furnished by the commissioner and shall be accompanied by the following documents and information: (1) Certificate of incorporation; (2) bylaws; (3) list of names and residence addresses of all officers and board of directors of the corporation; (4) contracts between the corporation and persons, firms,
corporations or associations to render direct health care services; (5) proposed contracts to be issued to subscribers setting forth in detail the direct health care services to which subscribers are entitled and the table of rates to be charged for such services; (6) financial statement showing the assets and liabilities of the corporation, the amount of contributions paid, or agreed to be paid, to the corporation for working capital, the names or name of each contributor and the terms of each contribution; and (7) any additional information as the commissioner may require.

(c) Within thirty days after receipt of an application, the commissioner shall, upon payment to him of a license fee of two hundred dollars, issue a license authorizing the corporation to transact business in this state in the area to be served by it, if he is satisfied (1) that the applicant is incorporated in this state under the provisions of article one, chapter thirty-one of the code of West Virginia as a bona fide, nonprofit corporation, (2) that the health care plan which the corporation proposes to operate, as well as the forms of all contracts which it proposes to issue under such health care plan, are based upon sound business principles and will be in every respect equitable, just and fair to the subscriber, (3) that the working capital available to the corporation will be sufficient to pay all operating expenses during the subscription period, and (4) that the proposed plan will adequately serve the best interests of all the people of the area in which the corporation intends to operate, regardless of their race, color or religion.

(d) The commissioner may refuse to license a corporation when he determines that such corporation has not complied with the laws of this state, or that it is not in the best interest of the people of the state that such corporation be licensed, or that such corporation would transact business in this state in an improper, illegal or unjust manner. In such event, the commissioner shall enter an order refusing the license and the applicant therefor may have a hearing and judicial review in accordance with the applicable provisions of article two of this chapter relating to hearings before and judicial
review of orders entered by the commissioner.

(e) All licenses issued under the provisions of this article shall expire at midnight on the thirty-first day of March next following the date of issuance. The commissioner shall renew annually the license of all corporations which qualify and make applications therefor upon a form prescribed by the commissioner upon payment to the commissioner of a renewal fee of two hundred dollars.

(f) The commissioner shall, after notice and hearing, refuse to renew or shall revoke or suspend the license of a corporation, if the corporation: (1) Violates any provision of this article; (2) fails to comply with any lawful rule, regulation or order of the commissioner; (3) is transacting its business in an illegal, improper or unjust manner, or is operating in contravention of its articles of incorporation or any amendments thereto, of its bylaws, or of its health care plan; (4) is found by the commissioner to be in an unsound condition or in such condition as to jeopardize its obligations to subscribers and those with whom it has contracted; (5) compels subscribers to its health care program to accept less than the obligation due them under their contracts or agreements with the corporation; (6) refuses to be examined or to produce its accounts, records and files for examination by the commissioner when required; (7) fails to pay any final judgment rendered against it in West Virginia within thirty days after the judgment became final or time for appeal expired, whichever is later; (8) fails to pay when due to the state of West Virginia any fees, charges or penalties required by this chapter.

In those cases where the commissioner has the right to revoke, suspend or terminate the license or any renewal thereof of said corporation, the commissioner shall, by order, require the corporation to pay to the state of West Virginia a penalty in the sum not exceeding one thousand dollars, and on the failure of the corporation to pay the penalty within thirty days after notice thereof, the commissioner shall revoke or suspend the license of the corporation.
When any license has been revoked, suspended or terminated, the commissioner may reinstate the license when he is satisfied that the conditions causing the revocation, suspension or termination have ceased to exist and are unlikely to recur.

In the event the commissioner revokes, suspends or terminates a license, the corporation may demand a hearing in the manner provided in article two of this chapter.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


Every health maintenance organization subject to this article shall pay to the commissioner the following fees:

For filing an application for a certificate of authority or amendment thereto, two hundred dollars; and for filing each annual report, twenty-five dollars. Fees charged under this section shall be for the purposes set 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 of this article, an insurer may invest in shares of insured state chartered building and loan associations and federal savings and loan associations, if such shares are insured by the federal savings and loan insurance corporation and may invest in obligations issued or guaranteed by the “International Bank for Reconstruction and Development” or by the “Asian Development 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, committee, trustee or other fiduciary whose duty it may be to loan or invest money entrusted to him as such, may, without any order of any court, invest the same or any part thereof in any of the following securities, and without liability for any loss resulting from investments therein: Provided, That such fiduciary shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital:

(a) In bonds or interest-bearing notes or obligations of
the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof, including, but not by way of limitation, bonds or debentures issued under the "Federal Farm Loan Act," debentures issued by "Banks for Cooperatives" under the "Farm Credit Act of One Thousand Nine Hundred Thirty-Three," as amended, debentures issued by the federal national mortgage association, securities issued by the federal home loan bank system; and in bonds, interest-bearing notes and obligations issued, guaranteed or assumed by the "International Bank for Reconstruction and Development" or by the "Inter-American Development Bank" or by the "Asian Development Bank" or by the "African Development Bank";

(b) In bonds or interest-bearing notes or obligations of this state;

(c) In bonds of any state of the United States which has not within ten years previous to the making of such investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the legislature of such state;

(d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political division of this state that have been issued pursuant to the authority of any law of this state, since the ninth day of May of the year one thousand nine hundred seventeen;

(e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate where the amount secured by such mortgage or trust deed shall not at the time of making the same exceed eighty percent of the assessed value, or sixty-six and two-thirds percent of the appraised value as determined by wholly disinterested and independent appraisers, whichever value shall be the higher, of the real estate covered by such mortgage or trust deed, and when such mortgage or trust deed is accompanied by a satisfactory abstract of title, certificate of title or title insurance policy, showing good title in the mortgager when
making such mortgage or trust deed, and by a fire
insurance policy in an old line company with loss, if any,
payable to the mortgagee or trustee as his interest may
appear: Provided, That the rate of interest upon the
above enumerated securities in this subdivision (e), in
which such investments may be made, shall not be less
than three and one-half percent per annum nor greater
than the maximum rate of interest which such bonds
or negotiable notes may bear under applicable law:
Provided, however, That the provisions herein establish-
ing a minimum rate of interest shall not apply to
investments in force as of the effective date of this
section;

(f) In savings accounts and time deposits of bank or
trust companies to the extent that such deposits are
insured by the federal deposit insurance corporation, or
by any other similar federal instrumentality that may
be hereafter created, provided there shall be such an
instrumentality in existence and available for the
purpose, or by bonds of solvent surety companies:
Provided, That the rate of interest upon such savings
accounts or time deposits shall not be less than the rate
paid other depositors in such bank or trust company;

(g) In shares of state building and loan associations,
or federal savings and loan associations, to the extent
that such shares are insured by the federal savings and
loan insurance corporation, or by any other similar
federal instrumentality that may be hereafter created:
Provided, That there shall be such an instrumentality
in existence and available for the purpose, or by bonds
of solvent surety companies: Provided, however, That the
dividend rate upon such shares shall not be less than the
rate paid to other shareholders in such association;

(h) In other securities of corporations organized and
existing under the laws of the United States, or of the
District of Columbia or any state of the United States,
including, but not by way of limitation, bonds, deben-
tures, notes, equipment trust obligations or other,
evidences of indebtedness, and shares of common and
preferred stocks of such corporations and securities of
any open end or closed end management type invest-
ment company or investment trust registered under the
“Federal Investment Company Act” of one thousand
nine hundred forty, as from time to time amended,
which men of prudence, discretion and intelligence
acquire or retain for their own account, provided, and
upon conditions, however, that:

(1) No investment shall be made pursuant to the
provisions of this subdivision (h) which, at the time such
investment shall be made, will cause the aggregate
market value thereof to exceed fifty percent of the
aggregate market value at that time of all of the
property of the fund held by such fiduciary. Notwith-
standing the aforesaid percentage limitation the cash
proceeds of the sale of securities received or purchased
by a fiduciary and made eligible by this subdivision (h)
may be reinvested in any securities of the type described
in this subdivision (h).

(2) No bonds, debentures, notes, equipment trust
obligations or other evidence of indebtedness of such
corporations shall be purchased under authority of this
subdivision (h) unless such obligations, if other than
issues of a common carrier subject to the provisions of
section twenty-a of the “Interstate Commerce Act,” as
amended, shall be obligations issued, guaranteed or
assumed by corporations which have any securities
currently registered with the securities and exchange
commission.

(3) No common or preferred stocks, other than bank
and insurance company stocks, shall be purchased under
authority of this subdivision (h) unless currently fully
listed and registered upon an exchange registered with
the securities and exchange commission as a national
securities exchange. No sale or other liquidation of any
investment shall be required solely because of any
change in the relative market value of those investments
made eligible by this subdivision (h) and those made
eligible by the preceding subdivisions of this section. In
determining the aggregate market value of the property
of a fund and the percentage of a fund to be invested
under the provisions of this subdivision, a fiduciary may
rely upon published market quotations as to those
investments for which such quotations are available, and
upon such valuations of other investments as in the
fiduciary's best judgment seem fair and reasonable
according to available information.

Trust funds received by executors, administrators,
guardians, curators, committees, trustees and other
fiduciaries may be kept invested in the securities
originally received by them, or if the trust funds
originally received were stock or securities of a bank,
in shares of stock or other securities (and securities
received as distributions in respect thereof) of a holding
company subject to the Federal Bank Holding Company
Act of 1956, as amended, received upon conversion of,
or in exchange for, shares of stock or other securities
of such bank; unless otherwise ordered by a court having
jurisdiction of the matter, as hereinafter provided, or
unless the instrument under which the trust was created
shall direct that a change of investment be made, and
any such fiduciary shall not be liable for any loss that
may occur by depreciation of such securities.

This section shall not apply where the instrument
creating the trust, or the last will and testament of any
testator, or any court having jurisdiction of the matter,
specially directs in what securities the trust funds shall
be invested, and every such court is hereby given power
specially to direct by order or orders, from time to time,
additional securities in which trust funds may be
invested, and any investment thereof made in accord-
dance with any such special direction shall be legal, and
no executor, administrator, guardian, curator, commit-
tee, trustee or other fiduciary shall be held for any loss
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.

(a) Any rates, rating schedules, or rating manuals for the liability, personal injury protection and collision coverages of a motor vehicle insurance policy submitted to or filed with the insurance commissioner shall provide for an appropriate reduction in premium charges as to such coverages when the principal operator and spouse on the covered vehicle is an insured who is fifty-five years of age or older and who has successfully completed a motor vehicle accident prevention course approved by the department of motor vehicles. Such reductions of premium rates shall be made in compliance with the provisions of subsections (a) and (b), section three of this article. Any discount used by an insurer shall be presumed appropriate unless credible data demonstrates otherwise.

(b) The premium reduction required by this section shall be effective for an insured and spouse for a three-year period after successful completion of the approved course, except that the insurer may require, as a condition of maintaining the discount, that the insured and spouse:

(1) Not be involved in an accident for which the insured or spouse is at fault;

(2) Not be convicted, plead guilty or nolo contendere to a moving traffic violation, or to a traffic related alcohol or narcotics offense; and

(3) Have maintained a driving record free of violations
and liability for accidents for a three-year period prior to
course completion.

(c) Upon successfully completing the approved course,
each person shall be issued a certificate by the organiza-
tion offering the course which shall be used to qualify for
the premium discount required by this section.

(d) This section shall not apply in the event the ap-
proved course is taken as punishment specified by a court
or other governmental entity resulting from a moving
traffic violation.

(e) This reduction in premium charges shall not apply
to insurers already giving a reduction in premium charges
to persons fifty-five years of age or older which is equal
to or greater than the reduction approved by the commis-
sioner.

(f) Each participant shall take an approved course
every three years to continue to be eligible for the reduc-
tion in premiums.

CHAPTER 92
(H. B. 1592—By Delegate White and Delegate Riffe)

[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.

1 Annually, during the first quarter of each year, the commissioner shall publish a list of the current premium rates for minimum automobile liability insurance as required under the provisions of section two, article four, chapter seventeen-d of this code. The list shall contain the names of all insurers that are licensed by the commissioner to sell such insurance in this state and shall be presented in such a manner so as to demonstrate to the public an accurate comparison of the rates charged by each company for the same insurance coverage.

12 This list shall be made available to the public through the tax division of the sheriff's department and public 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.


1 This article shall be known and may be cited as the "West Virginia Essential Insurance Coverage Act."

§33-20A-2. Intent and purpose.

1 To provide for a mechanism whereby the commissioner may establish insurance plans to make available insurance coverages to persons who do not have coverages available to them in the voluntary insurance market.

§33-20A-3. West Virginia essential insurance association.

1 (a) The commissioner shall establish a nonprofit unincorporated legal entity to be known as the West Virginia essential insurance association to make fire and extended coverage insurance available to any person having an insurable interest in habitational or commercial property situated in this state who is equitably entitled to but unable to secure such insurance in the voluntary insurance market. Participation shall be required of all insurers doing any insurance business in this state of the kinds covered by the association as a condition of their authority to transact insurance in this state.

2 (b) The association shall perform its functions under a plan of operation established by regulation promulgated by the commissioner pursuant to chapter twenty-nine-a, article three of this code.

3 (c) If the commissioner finds after a public hearing that in any part of this state any other kind of essential insurance coverage is not readily available in the voluntary insurance market and that the public interest requires such availability, he may by regulation promulgate plans to provide such coverage through the association for any risks in this state which are equitably entitled to but unable to secure such insurance in the voluntary insurance market. Participation shall be required of all insurers doing any insurance business in this state of the kinds covered by the
§33-20A-4. Board of directors.

(a) The administrative powers of the association shall be vested in a board of directors consisting of not less than five nor more than nine members serving terms as established in the plan of operation. The members of the board shall be appointed by the commissioner with due consideration given to the composition of the membership of the association and to the interests of the insured who are provided essential insurance coverage by the association.

(b) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors and for reasonable and equitable compensation as may be prescribed by the terms of the plan of organization.

(c) The board of directors of the association shall submit to the commissioner a plan of organization for the association and make suitable or necessary amendments thereto to assure the fair, reasonable and equitable administration of the association. The plan of organization shall become effective upon approval in writing by the commissioner.

(d) If the association fails to submit a suitable plan of organization within a reasonable period of time, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall promulgate a plan as necessary or advisable to effectuate the provisions of this article.

§33-20A-5. General powers.

(a) The association has, for purposes of this article and to the extent approved by the commissioner, the general powers and authority granted under the laws of this state to insurers licensed to transact the kinds of insurance as defined in chapter thirty-three, article one of this code.

(b) The association may take any necessary action to make available necessary insurance including, but not limited to, the following:

(1) Assess participating insurers amounts necessary to pay the obligations of the association, administration expenses, the cost of examinations and other expenses
authorized under this article. The assessment of each
member insurer for the kind or kinds of insurance
designated in the plan shall be in the proportion that the net
direct written premiums of the member insurer for the
preceding calendar year bear to the net direct written
premiums of all members for the preceding calendar year. A
member insurer may not be assessed in any year an amount
greater than five percent of his net direct written premiums
for the preceding calendar year. Each member insurer shall
be allowed a premium tax credit at the rate of twenty
percent per year for five successive years following
termination of the association.

(2) Enter into such contracts as are necessary or proper
to carry out the provisions and purposes of the provisions of
this article.

(3) Sue or be sued, including taking legal action
necessary to recover any assessments for, on behalf of, or
against participant insurers.

(4) Investigate claims brought against the fund and
adjust, compromise, settle and pay covered claims to the
extent of the association’s obligation and deny all other
claims. Claims may be processed through the association’s
employees or through one or more member insurers or other
persons designated as servicing facilities. Designation of a
service facility is subject to the approval of the
commissioner, but such designation may be declined by a
member insurer.

(5) Classify risks as may be applicable and equitable.

(6) Establish appropriate rates, rate classifications and
rating adjustments, and file such rates with the
commissioner as may be required. Rates, rating plans and
any provision for recoupment shall be based upon the
association’s loss and expense experience and investment
income from unearned premium and loss reserves. Premium
rates, including initial premiums, shall be on an actuarially
sound basis and shall be calculated to be self-supporting.

(7) Administer any type of reinsurance program for or
on behalf of the association or any participating carriers.

(8) Pool risks among participating carriers.

(9) Issue and market through agents, policies of
insurance providing coverage required by this article in its
own name or on behalf of participating carriers.
(10) Administer separate pools, separate accounts, or other plans as may be deemed appropriate for separate carriers or groups of carriers.

(11) Invest, reinvest and administer all funds and moneys held by the association.

(12) Borrow funds needed by the association to effect the purposes of this section.

(13) Develop, effectuate and promulgate any loss prevention programs aimed at the best interests of the association and the insured public.

(14) Operate and administer any combination of plans, pools, reinsurance arrangements or other mechanisms as deemed appropriate to best accomplish the fair and equitable operation of the association for the purposes of making available essential insurance coverage.

(15) Provide for the method of recoupment of deficits that may be incurred by any plan pursuant to the plan of operation. In no event shall a deficit incurred by the association be charged directly or indirectly to any person other than insureds under its fire and extended coverage or essential insurance policy.


The commissioner and the association may:

(a) Give consideration to the need for adequate and readily accessible coverage, to alternative methods of improving the market affected, to the preferences of the insurers and agents, to the inherent limitations of the insurance mechanism, to the need for reasonable underwriting standards, and to the requirement of reasonable loss prevention measures.

(b) Establish procedures that will create minimum interference with the voluntary market.

(c) Spread the burden imposed by the facility equitably and efficiently.

(d) Establish procedures for applicants and participants to have grievances reviewed.

(e) Take all reasonable and necessary steps to dissolve the association at the earliest date when essential insurance becomes readily available in the private market. The dissolution of the association, including its assets and liabilities, shall be accomplished under the supervision of the commissioner in an equitable and reasonable manner.

1. There is no liability on the part of, and no cause of action of any nature against, the association or its agents or employees, members of the board, or the commissioner or his representatives for any good faith performance of their 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.

ARTICLE 1. PETIT JURIES.

§52-1-1. Declaration of policy.
§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.
§52-1-16. 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.


§52-1-1. Declaration of policy.

It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all citizens have the opportunity in accordance with this article to be considered for jury service and an obligation to serve as jurors when summoned for that purpose.


A citizen may not be excluded from jury service on account of race, color, religion, sex, national origin or economic status.

§52-1-3. Definitions.

As used in this article:

1. “The court” means the circuit and magistrate courts of this state, and includes, when the context requires, any judge of the court;

2. “Clerk” means clerk of the circuit court and includes any deputy circuit clerk;

3. “Master list” means the voter registration lists and drivers’ license lists for the county which may be supplemented with names from other sources prescribed pursuant to section five of this article in order to foster the policy and protect the rights secured by this article: Provided, That in the case of a county whose circuit court, or chief judge thereof, chooses to employ a jury box in place of a jury wheel, that “master list” means the voter registration lists for the county;

4. “Voter registration lists” means the official records
of persons registered to vote in the most recent general

election;

(5) "Drivers' license lists" means the official records

of persons licensed by the state to operate motor vehicles

and who reside within the county and have applied for

a driver's license or renewal of a driver's license within

the preceding two years. The department of motor

vehicles shall furnish such a list upon request of the

clerk of the circuit court;

(6) "Jury wheel" means any electronic system in which

are placed names or identifying numbers of prospective

jurors taken from the master list and from which names

are drawn at random for jury panels;

(7) "Jury box" means any physical, nonelectronic

device in which are placed names or identifying

numbers of prospective jurors taken from the master list

and from which names are drawn at random for jury

panels.

§52-1-4. Jury commission.

(a) A jury commission is established in each county to

manage the jury selection process under the supervision

and control of the circuit court. The jury commission

shall be composed of the clerk of the circuit court and

two jury commissioners appointed for a term of four

years by the chief judge of the circuit court or judge in

a single judge circuit. The terms of office for

commissioners shall commence on the first day of June

following appointment. Those jury commissioners

appointed by the circuit court or the chief judge thereof

in office when this section takes effect shall continue in

office, unless removed, until the expiration of their

respective terms of office.

No jury commissioner, after having served four years,

shall be eligible to serve a successive additional term:

Provided, That a jury commissioner in a Class V, VI or

VII county, as defined in section three, article seven,

chapter seven of this code, shall be eligible for appoint-

ment to serve one additional successive four year term

in such office. The jury commissioners must be citizens
of the United States, residents of the county for which they are appointed, and well-known members of opposing political parties of said county; the chairman of a political party shall be ineligible for appointment. The jury commissioners shall receive as compensation for their services, while necessarily employed, an amount to be fixed by the circuit court or the chief judge thereof, in accordance with the rules of the supreme court of appeals.

(b) Jury commissioners may be removed from office by the circuit court, or the chief judge thereof, for official misconduct, incompetency, habitual drunkenness, neglect of duty or gross immorality. Vacancies caused by death, resignation or otherwise shall be filled for the unexpired term in the same manner as the original appointments.

(c) Before entering upon the discharge of duties, a jury commissioner shall take and subscribe to an oath to the following effect:

State of West Virginia,

County of ___________________________, to wit:

I, A __________________ B __________________

do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and will faithfully discharge the duties of jury commissioner to the best of my skill and judgment and that I will not place any person upon the jury list in violation of law.

§52-1-5. Master list.

(a) Each jury commission must employ either a jury wheel or a jury box. The choice of employing a jury wheel or jury box is in the discretion of the circuit court, or the chief judge thereof.

(b) (1) In those counties whose circuit courts, or chief judges thereof, choose to employ a jury wheel, the jury commission shall compile and maintain a master list consisting of all voter registration lists and drivers' license lists for the county, supplemented with names from other lists of persons resident therein, such as lists
of utility customers, property and income taxpayers, and
motor vehicle registrations, which the supreme court of
appeals may designate. The supreme court of appeals
may exercise the authority to designate lists from time
to time in order to foster the policy and protect the
rights asserted by this article. In compiling the master
list the commission shall avoid the duplication of names.

(2) In those counties whose circuit courts, or chief
judges thereof, choose to employ a jury box, the jury
commission shall compile and maintain a master list
consisting of all voter registration lists for the county.
In compiling the master list the commission shall avoid
duplication of names.

(c) Whoever has custody, possession or control of any
of the lists making up or used in compiling the master
list, including those designated under subsection (b) (1)
of this section by the supreme court of appeals as
supplementary sources of names, shall make the list
available to the jury commission for inspection, repro-
duction and copying at all reasonable times.

(d) The master list is open to the public for examina-
tion.

§52-1-6. Jury wheel or jury box; random selection of
names from master list for jury wheel or
jury box.

(a) The jury commission for each county shall main-
tain a jury wheel or jury box, into which the commission
shall place the names or identifying numbers of
prospective jurors taken from the master list.

(b) In counties having a population of less than fifteen
thousand persons according to the last available census,
the jury wheel or jury box shall include at least two
hundred names; in counties having a population of at
least fifteen thousand but less than fifty thousand, at
least four hundred names; a population of at least fifty
thousand but less than ninety thousand, at least eight
hundred names; and a population of ninety thousand or
more, at least one thousand six hundred names. From
time to time a larger or additional number may be
determined by the jury commission or ordered by the
circuit court to be placed in the jury wheel or jury box.
In October of each even-numbered year the jury wheel
or jury box shall be emptied and refilled as prescribed
in this article: Provided, That the jury commission shall
take measures to ensure that a sufficient number of
jurors has been drawn from the earlier jury wheel or
jury box before it is emptied to provide jurors for all
jury panels until the jury wheel or jury box is refilled
and additional jurors may be drawn therefrom; and
those jurors drawn from the former wheel or box shall
remain eligible as jurors until the last day of December
of that year, and if drawn for a particular jury which
has not finished hearing or deciding the matter before
it by the last day of December of that year, said person
shall remain eligible as a juror for that particular
unfinished case or grand jury session until said case or
session is finished or the juror is otherwise discharged
as provided by law.

(c) The names or identifying numbers of prospective
jurors to be placed in the jury wheel or jury box shall
be selected by the jury commission at random from the
master list in the following manner: The total number
of names on the master list shall be divided by the
number of names to be placed in the jury wheel or jury
box and the whole number next greater than the
quotient shall be the "key number," except that the key
number shall never be less than two. A "starting
number" for making the selection shall then be deter-
dined by a random method from the numbers from one
to the key number, both inclusive. The required number
of names shall then be selected from the master list by
taking in order the first name on the master list
corresponding to the starting number and then succes-
sively the names appearing in the master list at
intervals equal to the key number, recommencing if
necessary at the start of the list until the required
number of names has been selected. Upon recommenc-
ing at the start of the list, or if additional names are
subsequently to be selected for the master jury wheel or
jury box, names previously selected from the master list
shall be disregarded in selecting the additional names.
The jury commission is not required to, but may, use an electronic or mechanical system or device in carrying out its duties. (For example, assume a county with a master list of eight thousand nine hundred eighty names, a population of less than fifteen thousand, and a desired jury box or wheel containing two hundred names. Eight thousand nine hundred eighty names divided by two hundred is forty-four and nine-tenths. The next whole number is forty-five. The commission would take every forty-fifth name on the list, using a random starting number between one and forty-five.)

(d) Prior to implementing the procedure described in subsection (c), the commission shall strike from the master list the names of all those persons who have 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.

(a) The chief judge of the circuit, or the judge in a single judge circuit, shall provide by order rules relating to the random drawing by the jury commission of panels from the jury wheel or jury box for juries in the circuit and magistrate courts. Upon receipt of the direction and in the manner prescribed by the court, the jury commission shall publicly draw at random from the jury wheel or jury box the number of jurors specified.

(b) If a jury is ordered to be drawn, the clerk thereafter shall cause each person drawn for jury service to be served not less than thirty days before the date for which the persons are to report for jury duty with a summons either personally or by registered or certified mail, return receipt requested, addressed to the person at their usual residence, business or post-office address, requiring them to report for jury service at a specified time and place.

(c) If the summons provided in subsection (b) of this section is served by registered or certified mail, the clerk shall also serve in the same mail with the summons a juror qualification form accompanied by instructions to fill out and return the form by mail to
the clerk within ten days after its receipt. If the
summons provided in subsection (b) of this section is
served personally, such service shall also include a like
juror qualification form with similar instructions to
complete and return the form. The juror qualification
form is subject to approval by the circuit court as to
matters of form and shall elicit the name, address of
residence, sex, race and age of the prospective juror and
whether the prospective juror:

(1) Is a citizen of the United States and a resident of
the county;

(2) Is able to read, speak and understand the English
language;

(3) Has any physical or mental disability substantially
impairing the capacity to render satisfactory jury
service;

(4) Has served as a magistrate, petit or grand juror
within the previous two years;

(5) Has lost the right to vote because of a criminal
conviction; and

(6) Has been convicted of perjury, false swearing, or
other infamous offense.

The juror qualification form shall contain the prospec-
tive juror’s declaration that the responses are true to the
best of the prospective juror’s knowledge and an
acknowledgment that a willful misrepresentation of a
material fact may be punished by a fine of not more
than five hundred dollars or imprisonment for not more
than thirty days, or both fine and imprisonment.

Notarization of the juror qualification form shall not be
required. If the prospective juror is unable to fill out the
form, another person may do it for the prospective juror
and indicate that such person has done so and the reason
therefor. If it appears there is an omission, ambiguity
or error in a returned form, the clerk shall again send
the form with instructions to the prospective juror to
make the necessary addition, clarification or correction
and to return the form to the clerk within ten days after
its second receipt.
[d] Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commission to appear forthwith before the clerk to fill out the juror qualification form. At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, any prospective juror may be required to fill out another juror qualification form in the presence of the court or clerk, at which time the prospective juror may be questioned, but only with regard to the responses to questions contained on the form and ground for the prospective juror's excuse or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

(e) A prospective juror who fails to appear as directed by the commission pursuant to subsection (b) of this section shall be ordered by the court to appear and show cause for failure to appear as directed. If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for failure to appear as directed by the jury commission, such prospective juror is guilty of civil contempt and shall be fined not more than one thousand dollars.

(f) Any person who willfully misrepresents a material fact on a juror qualification form or during any interview described in subsection (b) of this section for the purpose of avoiding or securing service as a juror, is guilty of a misdemeanor, and, upon conviction, shall be fined not more than five hundred dollars or imprisoned not more than thirty days, or both fined and imprisoned.

§52-1-8. Disqualification from jury service.

(a) The court, upon request of the jury commission or a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service. The clerk shall enter this determination in the space
provided on the juror qualification form and on the alphabetical lists of names drawn from the jury wheel or jury box.

(b) A prospective juror is disqualified to serve on a jury if the prospective juror:

(1) Is not a citizen of the United States, at least eighteen years old and a resident of the county;

(2) Is unable to read, speak and understand the English language;

(3) Is incapable, by reason of substantial physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion;

(4) Has served as a magistrate, petit or grand juror within the previous two years;

(5) Has lost the right to vote because of a criminal conviction; or

(6) Has been convicted of perjury, false swearing, or other infamous offense.

(c) A prospective juror sixty-five years of age or older is not disqualified from serving, but shall be excused 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.

(a) The jurors drawn for jury service shall be assigned at random by the clerk to each jury panel in a manner prescribed by the court.

(b) If there is an unanticipated shortage of available petit jurors drawn from the jury wheel or jury box the court may require the sheriff to summon a sufficient number of petit jurors selected at random by the clerk from the jury wheel or jury box in a manner prescribed 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
10 (b) A person who is not disqualified for jury service
11 under section eight of this article may be excused from
12 jury service by the court upon a showing of undue
13 hardship, extreme inconvenience, or public necessity,
14 for a period the court deems necessary, at the conclusion
15 of which the person shall reappear for jury service in
16 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,
1 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
of either party to the suit, made either on the first day
of the term of the court or at any other time not less
than five days before the day set for the trial, may, in
its discretion, disqualify jurors who are citizens or
taxpayers of such municipal corporations. But this
 provision does not apply in any case between a munici-
pal corporation and any citizen or taxpayer of such
corporation.

§52-1-14. When and how jurors are to be summoned
from other county.

In any criminal case in any court, if in the opinion of
the court, or the judge thereof in vacation, qualified
jurors, not exempt from serving, cannot be conveniently
found in the county in which the trial is to be, the court,
or the judge thereof in vacation, shall enter an order of
record to such effect and may cause so many jurors as
may be necessary to be summoned from any other
county. In such order the court, or the judge thereof in
vacation, shall fix a day on which the jurors shall be
required to attend and in the order shall indicate the
county from which the jurors shall be drawn and the
number of jurors to be drawn. An attested copy of the
order shall be certified to the circuit court of the county
designated, or the judge thereof in vacation, and
thereupon such circuit court or the judge thereof in
vacation, shall, by order, direct that a jury be drawn in
the manner provided by law for the drawing of petit
jurors and proceedings respecting the drawing of the
jurors, including the names of the jurors so drawn, shall
be certified by the clerk of the circuit court of the county
designated to the clerk of the court wherein the trial is
to be. Thereupon, the clerk of the circuit court of the
county from which the jurors are to be drawn shall
summon, in the manner provided in section nine of this
article, the jurors so drawn to attend for jury service in
the county wherein the trial is to be held.

§52-1-15. Challenging compliance with selection
procedures.

(a) Within seven days after the moving party disco-
vered or by the exercise of diligence could have
discovered the grounds therefor, and in any event before
the petit jury is sworn to try the case, a party may move
to stay the proceedings and in a criminal case to quash
the indictment or for other appropriate relief on the
ground of substantial failure to comply with this article
in selecting the jury.

(b) Upon motion filed under subsection (a) of this
section containing a sworn statement of facts which, if
true, would constitute a substantial failure to comply
with this article, the moving party is entitled to present
in support of the motion the testimony of the jury
commissioners or the clerk, any relevant records and
papers not public or otherwise available used by the jury
commissioners or the clerk, and any other relevant
evidence. If the court determines that in selecting a jury
there has been a substantial failure to comply with this
article, the court shall stay the proceedings pending the
selection of the jury in conformity with this article, quash an indictment or grant other appropriate relief.

(c) In the absence of fraud, the procedures prescribed
by this section are the exclusive means by which a
person accused of a crime, the state or a party in a civil
case, may challenge a jury on the ground that the jury
was not selected in conformity with this article.

§52-1-16. Preservation of records.

All records and papers compiled and maintained by
the jury commissioners or the clerk in connection with
selection and service of jurors shall be preserved by the
clerk for at least four years after the jury wheel or jury
box used in their selection is emptied and refilled, or for
any longer period ordered by the court.

The jury commission of each county shall make an
annual report no later than the first day of March of
each year to the supreme court of appeals setting forth
the following information: Whether the commission
employed a jury box or jury wheel for the year reported,
and the age, race and gender of each person for whom
a juror qualification form has been received. The
supreme court of appeals shall provide this information
to the president of the senate and the speaker of the
§52-1-17. Mileage and compensation of jurors.

(a) A juror shall be paid mileage, at the rate set by the commissioner of finance and administration for state employees, for travel expenses from the juror's residence to the place of holding court and return and shall be compensated at a rate of between fifteen and forty dollars, set at the discretion of the circuit court or the chief judge thereof, for each day of required attendance at sessions of the court. Such compensation shall be based on vouchers submitted to the sheriff. Such mileage and compensation shall be paid out of the state treasury.

(b) When a jury in any case is placed in the custody of the sheriff, he shall provide for and furnish the jury necessary meals and lodging while they are in the sheriff's custody at a reasonable cost to be determined by an order of the court; and the meals and lodging shall be paid for out of the state treasury.

(c) There shall be taxed in the costs against any person against whom a judgment on the verdict of a jury may be rendered in a case of misdemeanor or felony and against any person against whom judgment on the verdict of a jury may be rendered in a civil action, a total of one hundred eighty dollars for jury costs. Such costs when collected by the circuit clerk or the magistrate clerk from the party, shall be paid by the sheriff into the state treasury. All money so received by the clerk shall be forthwith paid by the clerk to the sheriff and the clerk and the clerk's surety are liable therefor on the clerk's official bond as for other money coming into the clerk's hands by virtue of the clerk's office.

(d) The clerks of the circuit court and magistrate court of each county in this state shall annually certify to the county commission a list of all money so paid to the clerk and by the clerk paid to the sheriff, and in addition thereto, a correct list of all the cases in which jury fees have been taxed and are, at the time, properly due and payable in the state treasury, and the sheriff
§52-1-18. When juror not entitled to compensation.

1 No juror who departs without leave of the court or who, being summoned as a witness for the state, charges for attendance as such, may be entitled to receive any 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 attendance shall, before the final adjournment of each term, and under the direction of the court, make an entry upon its minutes stating separately the amount which each juror is entitled to receive out of the state treasury for services or attendance during the term; and the clerk of any court upon which juries are in attendance, if directed by the court, shall at any time during the term and under the direction of the court make an entry upon its minutes stating separately the amount which each juror is entitled to receive out of the state treasury for services or attendance during the term. It is the duty of the clerk, as soon as practicable after adjournment of the court, to transmit to the auditor certified copies of all orders under this section making allowances payable out of the state treasury. Any clerk who fails to pay over, as required by law, any moneys so received by the clerk or otherwise to comply with the provisions of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than three hundred dollars.

§52-1-20. Payment of compensation.

1 It is the duty of the clerk, as soon as practicable after the adjournment of the court or before the adjournment of the court at such time as the court may direct, to deliver to the sheriff of the county certified copies of all orders under section nineteen of this article making
allowances to jurors payable out of the state treasury.
The sheriff shall, upon receipt of such order or orders,
issue a check payable to the juror for the amount
allowed to him and deliver the check to the clerk who
shall deliver it to the juror. If any sheriff fails to pay
any allowance as required by law, the sheriff may be
proceeded against as for a contempt of court.

Any allowance paid by the sheriff under the provi-
sions of this section shall be repaid to the sheriff out of
the state treasury upon the production of satisfactory
proof that the same has actually been paid by the
sheriff. Proof of payment shall be in the form of a
complete itemized statement indicating the total amount
eligible for reimbursement.

§52-1-21. Excuse from employment.

Upon receiving a summons to report for jury duty an
employee shall, the next day the employee is engaged
in employment, exhibit the summons to the employee's
immediate superior and the employee shall thereupon be
excused from employment for the day or days required
in serving as a juror in any court created by the
constitutions of the United States or of the state of West
Virginia or the laws of the United States or the state
of West Virginia.

§52-1-22. Fraud in selection of jurors; penalties.

If any person is guilty of any fraud by tampering with
the jury wheel or jury box prior to drawing jurors or
in any other way in the drawing of jurors, such person
shall be guilty of a felony, and, upon conviction thereof,
shall be fined not more than five thousand dollars, or
imprisoned in the penitentiary for not less than one nor
more than five years, or both fined and imprisoned.

§52-1-23. Length of service by jurors.

In any two-year period a person may not be required:

(1) To serve or attend court for prospective service as
a juror more than thirty court days, except if necessary
to complete service in a particular case;

(2) To serve on more than one grand jury;
(3) To serve as both a grand and petit juror; or
(4) To serve as a petit juror at more than one term of court.

§52-1-24. Penalties for failure to perform jury service.

A person summoned for jury service who fails to appear or to complete jury service as directed shall be ordered by the court to appear forthwith and show cause for failure to comply with the summons. If the person fails to show good cause for noncompliance with the summons, the person is guilty of civil contempt and shall 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.

The present method of jury selection utilized by a county shall remain in full force until a master list of potential jurors has been prepared by the jury commission under this article.


All provisions of this article shall apply with equal force and effect to the selection of jurors for magistrate juries as well as for petit juries.

ARTICLE 2. GRAND JURIES.

§52-2-4. Quorum; additional jurors.


The provisions of article one of this chapter relating to petit juries, so far as applicable and not inconsistent with the provisions of this article, shall be observed and govern grand juries.


The jury commissioners of any court requiring a grand jury shall, at least thirty days before the term of
court, draw and assign persons for the grand jury, but
the court, or judge thereof, may require the jury
commissioners to appear forthwith, or at any specified
time and draw and assign grand jurors for either a
regular, special or adjourned term of court. On the day
appointed, the jury commissioners shall appear and
draw the names of sixteen persons from the jury wheel
or jury box, and the persons so drawn shall constitute
the grand jury, and, at the same time the jury commis-
sioners shall draw the names of not less than six nor
more than twelve additional persons from the jury wheel
or jury box, as the chief judge of the circuit, or the judge
in a single judge circuit shall by prior order direct, and
the persons so drawn shall constitute alternate jurors for
the grand jury and the judge may replace any absent
members of the grand jury from among the alternate
grand jurors in the order in which the alternate jurors
were drawn. The jury commissioners shall enter the
names of all persons so drawn in a book kept for that
purpose, and they shall issue summonses to the persons
so drawn in the same manner as that provided for petit
jurors in subsection (b), section seven, article one of this
chapter.

§52-2-4. Quorum; additional jurors.

Any fifteen or more of the grand jurors attending
shall be a competent grand jury. If there is an unan-
ticipated shortage of grand jurors drawn from the jury
wheel or jury box, the court may require the sheriff to
summon a sufficient number of grand jurors selected by
the clerk in a manner prescribed and supervised by the
circuit court: Provided, That the number of grand jurors
selected in this manner not exceed two.


Every person who shall serve upon a grand jury may
not be paid for more than four days' service at any one
term of the court, except in the counties of Harrison,
McDowell, Fayette, Cabell, Marshall, Marion, Mercer,
Wood, Ohio, Mingo, Monongalia, Preston and Summers,
where such grand jurors may not be paid for more than
ten days' service for any one term of court, and except
in Kanawha County where such grand jurors may not be paid for more than sixty days' services for any one term of court. Grand jurors shall be paid mileage, at the rate set by the commissioner of finance and administration for state employees, for travel expenses incurred in traveling from the grand juror's residence to the place of the holding of the grand jury and return, and shall be compensated at a rate of between fifteen and forty dollars, set at the discretion of the circuit court or the chief judge thereof, for each day of required attendance 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.

(a) Any person who, as an employee, is discriminated against by his employer because such employee received, or was served with a summons for jury duty, or was absent from work to respond to a summons for jury duty or to serve on any jury in any court of this state, the United States or any state of the United States, may have an action against his employer in the circuit court of the county where the jury summons originated or where the discrimination occurred. If the circuit court finds that an employer terminated or threatened to terminate from employment, or decreased the regular compensation of employment of an employee for time the employee was not actually away from his employment because the employee served as a juror, the court may order the employer to cease and desist from this unlawful practice and order affirmative relief, including, but not limited to, reinstatement of the employee with or without back pay as will effectuate the purposes of this section.

(b) Nothing in this section shall be construed to require an employer to pay an employee any wages or other compensation for the time the employee is actually away from employment for jury services or to respond to a jury summons.

(c) If the employee prevails in an action under subsection (a) of this section, the employee shall be
allowed reasonable attorney's fees as fixed by the court.

d) Any employer who discriminates against an employee because the employee received or was served with a summons for jury duty, or was absent from work to respond to a summons for jury duty or to serve on any jury in any court of this state, the United States or any state of the United States, is guilty of civil contempt and shall be fined not less than one hundred dollars nor 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 the president of the Senate and three members of the House of Delegates to be appointed by the speaker of the house. No more than two of the three members appointed by the president of the Senate and the speaker of the house, respectively, may be members of the same political party.
3 (2) The commissioner of the department of human services, the commissioner of corrections and the state director of health who shall serve as ex officio members.
(3) Two persons trained and employed as school guidance counselors, one to be appointed by the president of the Senate and one to be appointed by the speaker of the house.

The first appointed members of the commission shall serve for a term expiring on the thirtieth day of June in the year of the next succeeding regular session of the Legislature. At the commencement of such next succeeding regular session and at the commencement of regular sessions every two years thereafter, members of the commission shall be appointed for two-year terms beginning the first day of July in the year of each such regular session. Vacancies on the commission shall be filled for unexpired terms in the same manner as appointments to the commission.

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.


After the thirty-first day of December, one thousand nine hundred eighty-six, every employer shall pay to each of his employees wages at a rate not less than three 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.

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-3. Application of chapter; limitations.

(a) The provisions of this chapter do not apply in any respect whatever to executive orders of the governor, which orders to the extent otherwise lawful, shall be effective according to their terms: Provided, That the executive orders shall be admitted to record in the state register when and to the extent the governor deems suitable and shall be included therein by the secretary of state when tendered by the governor.

(b) Except as to requirements for filing in the state register, and with the Legislature or its rule-making review committee, provided in this chapter or other law, the provisions of this chapter do not apply in any respect whatever to the West Virginia board of probation and parole, the public service commission, the board of public works sitting as such, the West Virginia board of education and the West Virginia board of regents: Provided, That rules of such agencies shall be filed in the state register in the form prescribed by this chapter and be effective no sooner than sixty consecutive days after being so filed: Provided, however, That the rules promulgated by the state colleges and universities shall only be filed with the West Virginia board of regents: Provided further, That such agencies may promulgate emergency rules in conformity with section fifteen, article three of this chapter.

(c) The provisions of this chapter do not apply to rules relating to, or contested cases involving public elections, the conduct of inmates or other persons admitted to public institutions, the conduct of students at public schools or public educational institutions, the open seasons and the bag, creel, size, age, weight and sex limits with respect to the wildlife in this state, the conduct of persons in military service or the receipt of public assistance. Such rules shall be filed in the state register in the form prescribed by this
chapter and be effective upon filing.

(d) Nothing herein shall be construed to affect, limit or expand any express and specific exemption from this chapter contained in any other statute relating to a specific agency, but such exemptions shall be construed and applied in accordance with the provisions of this chapter to effectuate any limitations on such exemptions contained in any such other statute.

ARTICLE 2. STATE REGISTER.


(a) Each rule or proposed rule filed by an agency in the state register shall include as its initial provision: (1) A statement identifying such rule as a legislative rule, an interpretive rule, or a procedural rule, as the case may be; (2) a statement of such section, article and chapter of this code to which such rule or any part thereof relates; and (3) a statement of the section, article and chapter of this code or any other provision of law which provides authority for the promulgation of such rule. The agency shall be estopped from relying on any authority for the promulgation of such rule which is not stated therein in accordance with the requirements of this subdivision.

(b) Each rule when filed to be finally effective shall have attached thereto an abstract of its promulgation history prepared by the agency showing the date of the filing in the state register of the content of, or notice of any procedure relating to, action necessary under this chapter to cause such rule to be finally effective: Provided, That any error or omission in such abstract shall not affect the validity of any rule or action in respect thereto.

(c) The secretary of state shall prescribe by legislative rule a standard size, format, numbering and indexing for rules to be filed in the state register and he may prescribe such procedural or interpretive rules as he deems advisable to clarify and interpret the provisions in this section. The secretary of state shall refuse to accept for filing any rules which do not comply with the specific provisions of this
section, and he may refuse to accept for filing any rules which do not comply with the procedural rules issued by him pursuant to this section until the rules sought to be filed are brought into conformity with the secretary of state’s procedural rules.

(d) Unless and until the secretary of state prescribes otherwise by rule issued and made effective under the provisions of subsection (c) of this section, each rule filed in the state register shall be on white paper measuring eight and one-half inches by eleven inches, typewritten and single-spaced, with a one inch margin at the top, bottom and each side of each page, and shall be reproduced photographically, or by xerography or other duplication process. The secretary of state may grant specific exceptions to such requirements in the case of maps, diagrams and exhibits, if the same may not be conveniently folded and fastened with the other pages of rules and in the case of rules which incorporate the promulgation of a federal agency or other organization which could not be submitted in the standard size and format except at undue expense. Materials submitted for inclusion in the state register shall be fastened on the left side by two or more fasteners attached through holes suitable for insertion into ring binders.


1 Every agency shall file in the state register all final orders, decisions and opinions in the adjudication of contested cases except those required for good cause to be held confidential and not cited as precedent. Except as otherwise required by statute, matters of official record shall be made available for public inspection pursuant to rules adopted in accordance with the provisions of this chapter.

ARTICLE 3. RULE MAKING.

§29A-3-11. 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.

1 When an agency proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate such rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law.

2 An agency proposing a legislative rule, other than an emergency rule, shall first file in the state register a notice of its proposal, including the text of the legislative rule and including all materials required in the case of a procedural or interpretive rule. The agency shall then proceed as in the case of a procedural and interpretive rule to the point of, but not including, final adoption. In lieu of final adoption, the agency shall approve the rule, including any amendments, for submission to the Legislature and file such notice of approval in the state register and with the legislative rule-making review committee.

3 Such approval of the rule by the agency for submission to the Legislature shall be deemed to be approval for submission to the Legislature only and not deemed to give full force and effect until authority to do so is granted by law.

§29A-3-11. Submission of legislative rules to the legislative rule-making review committee.

1 (a) When an agency finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section nine of this article, the agency shall submit to the legislative rule-making review committee at its offices or at a regular meeting of such committee fifteen copies of (1) the full text of the legislative rule as finally approved by the agency, with new language underlined and with language to be deleted from any existing rule stricken-through but clearly legible; (2) a brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a statement of the circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the
economic impact of the rule on the state or its residents; and
or which may be required by law.

(b) The committee shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the agency has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(c) After reviewing the legislative rule, the committee shall recommend that the Legislature:

(1) Authorize the agency to promulgate the legislative rule, or

(2) Authorize the agency to promulgate part of the legislative rule, or

(3) Authorize the agency to promulgate the legislative rule with certain amendments, or

(4) Recommend that the rule be withdrawn.

The committee shall file notice of its action in the state register and with the agency proposing the rule: Provided, That when the committee makes the recommendations of
(d) When the committee recommends that a rule be authorized, in whole or in part, by the Legislature, the committee shall instruct its staff or the office of legislative services to draft a bill authorizing the agency to promulgate all or part of the legislative rule, and incorporating such amendments as the committee desires. If the committee recommends that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together with a recommendation. Any draft bill prepared under this section shall contain a legislative finding that the rule is within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret and shall be available for any member of the Legislature to introduce to the Legislature.

§29A-3-12. Submission of legislative rules to Legislature.

(a) No later than forty days before the sixtieth day of each regular session of the Legislature, the cochairman of the legislative rule-making review committee shall submit to the clerk of the respective houses of the Legislature copies of all proposed legislative rules which have been submitted to and considered by the committee pursuant to the provisions of section eleven of this article and which have not been previously submitted to the Legislature for study, together with the recommendations of the committee with respect to such rules, a statement of the reasons for any recommendation that a rule be amended or withdrawn, and a statement that a bill authorizing the legislative rule has been drafted by the staff of the committee or by legislative services pursuant to section eleven of this article. The cochairman of the committee may also submit such rules at the direction of the committee at any time before or during a special session in which consideration thereof may be appropriate. The committee may refuse to consider and withhold from its report any proposed legislative rule which was submitted to the committee fewer than two hundred ten days before the end of a regular session. The clerk of each house shall submit the report to his house at the commencement of the next session.
All bills introduced authorizing the promulgation of a rule may be referred by the speaker of the House of Delegates and by the president of the Senate to appropriate standing committees of the respective houses for further consideration or the matters may be otherwise dealt with as each house or its rules provide. The Legislature may by act authorize the agency to adopt a legislative rule incorporating the entire rule, or may authorize the agency to adopt a rule with any amendments which the Legislature shall designate. The clerk of the house originating such act shall forthwith file a copy of any bill enacted in contemplation of this section in the state register and with the agency proposing such rule and the clerk of each house may prepare and file a synopsis of legislative action during any session on any proposed rule submitted to the house during such session for which authority to promulgate was not by law provided during such session.

(b) If the Legislature fails during its regular session to act upon all or part of any legislative rule which was submitted to it by the legislative rule-making review committee during such session, no agency may thereafter issue any rule or directive or take other action to implement such rule or part thereof unless and until otherwise authorized to do so.

(c) Nothing herein shall be construed to prevent the Legislature by law from authorizing or authorizing and directing an agency to promulgate legislative rules not proposed by the agency or upon which some procedure specified in this chapter is not yet complete.

(d) Whenever the Legislature is convened by proclamation of the governor, upon his own initiative or upon application of the members of the Legislature, or whenever a regular session of the Legislature is extended or convened by the vote or petition of its members, the Legislature may by act enacted during such extraordinary or extended session authorize, in whole or in part, any legislative rule whether submitted to the legislative rule-making review committee, or not, if legislative action on such rule during such session is a lawful order of business.

(e) Whenever a date is required by this section to be computed in relation to the end of a regular session of the Legislature, such date shall be computed without regard to
any extensions of such session occasioned solely by the proclamation of the governor.

(f) Whenever a date is required to be computed from or is fixed by the first day of a regular session of the Legislature, it shall be computed or fixed in the year one thousand nine hundred eighty-four, and each fourth year thereafter without regard to the second Wednesday of January of such years.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

(a) Any agency with authority to propose legislative rules may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the state register and shall become effective immediately upon such filing. Such emergency rules may adopt, amend or repeal any legislative rule but the circumstances constituting the emergency requiring such adoption, amendment or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity. Fifteen copies of the rules and of the required statement shall be filed forthwith with the legislative rule-making review committee.

An emergency rule shall be effective for not more than fifteen months and shall expire earlier if any of the following occurs:

(1) The secretary of state, acting under the authority provided for in section fifteen-a of this article, disapproves the emergency rule because (A) the agency has exceeded the scope of its statutory authority in promulgating the emergency rule; (B) an emergency does not exist justifying the promulgation of such rule; or (C) the rule was not promulgated in compliance with the provisions of this section.

(2) The agency has not previously filed and fails to file a notice of public hearing on the proposed rule within sixty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the sixty-first day.
(3) The agency has not previously filed and fails to file the proposed rule with the legislative rule-making review committee within one hundred eighty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the one hundred eighty-first day.

(4) The Legislature has authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated, and in which case the emergency rule expires on the date the authorized rule is made effective.

(5) The Legislature has, by law, disapproved of such emergency rule; in which case the emergency rule expires on the date the law becomes effective.

(b) Any amendment to an emergency rule made by the agency shall be filed in the state register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (1), (2), (3) or (4), subsection (a) of this section.

(c) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (1), (2), (3) or (4), subsection (a) of this section, the agency may not refile the same or similar rule as an emergency rule.

(d) Emergency legislative rules currently in effect under the prior provisions of this section may be refiled under the provisions of this section.

(e) The provisions of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(f) The legislative rule-making review committee may review any emergency rule to determine (1) whether the agency has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of such rule; and (3) whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section.
The committee may recommend to the agency, the Legislature, or the secretary of state such action as it may deem proper.

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

§29A-3-15a. Disapproval of emergency rules by the secretary of state; judicial review.

(a) Upon the filing of an emergency rule by an agency under the provisions of section fifteen of this article, the secretary of state shall review such rule and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule should be disapproved.

(b) The secretary of state shall disapprove an emergency rule if he determines:

(1) That the agency has exceeded the scope of its statutory authority in promulgating the emergency rule;

(2) That an emergency does not exist justifying the promulgation of the rule; or

(3) That the rule was not promulgated in compliance with the provisions of section fifteen of this article.

(c) If the secretary of state determines, based upon the contents of the rule or the supporting information filed by the agency, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the secretary of state concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(d) The determination of the secretary of state shall be reviewable by the supreme court of appeals under its original jurisdiction, based upon a petition for a writ of
mandamus, prohibition or certiorari, as appropriate. Such proceeding may be instituted by:

(1) The agency which promulgated the emergency rule;
(2) A member of the Legislature; or
(3) Any person whose personal or property interests will be significantly affected by the approval or disapproval of 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.
§64-2-16(2d)(8). State board of health; West Virginia health care cost review authority.
§64-2-16(4c)(6). Director of health.
§64-2-16(5h)(2). Director of health.
§64-2-16(5i)(5). State board of health.
§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.

§64-2-10(1)(11). West Virginia library commission.

The legislative rules filed in the state register on the twenty-second day of October, one thousand nine hundred eighty-five, modified by the West Virginia library commission to meet the objections of the legislative rule-making review committee and refiled in the state register on
the twelfth day of November, one thousand nine hundred eighty-five, relating to the West Virginia library commission (designating a grace period for the return of library materials) are authorized.


The legislative rules filed in the state register on the twenty-second day of May, one thousand nine hundred eighty-five, relating to the state tax commissioner (rules governing the operation of a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property) are authorized.

§64-2-16(2d)(8). State board of health; West Virginia health care cost review authority.

(a) The rules authorized by the Legislature in subsection (a), section sixteen (2d)(5) of this article were also proposed by the state board of health pursuant to section eight, article two-d, chapter sixteen of this code.

(b) The legislative rules filed in the state register on the twenty-fifth day of November, one thousand nine hundred eighty-five, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia health care cost review authority (interim standards for lithotripsy services) are authorized.

§64-2-16(4c)(6). Director of health.

The legislative rules filed in the state register on the thirty-first day of October, one thousand nine hundred eighty-five, modified by the director of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of December, one thousand nine hundred eighty-five, relating to the director of health (rules governing emergency medical services) are authorized with the amendments set forth below:

On page 3, §3.9 shall read as follows:

"3.9 Quorum — When applied to the EMSAC, a majority
of the members thereof, except in the instance when at any
meeting of the EMSAC, where a quorum is not present and
the director causes to be deposited in the United States
mail, postage prepaid, return receipt requested, to each
member of the EMSAC within three days, a notice calling a
meeting of the EMSAC at some convenient place in the state
of West Virginia two weeks after the meeting at which no
quorum was present. Quorum means any number of
members of the EMSAC who attend such subsequent
meeting. Any member missing two consecutive meetings
shall be removed from the EMSAC.”

On page 6, §4.7.1 shall be deleted in its entirety, and
On page 7, §4.10.1 shall read as follows:
“4.10.1 every applicant for certification as an EMSP prior
to such certification, shall demonstrate his or her
knowledge and ability by undergoing a written
demonstration of skills, and by attaining
a passing score on the same. Passing score shall be the same
for all testing programs.”

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-

1. The legislative rules filed in the state register on the fifth day of September, one thousand nine hundred eighty-five, relating to the state department of health (revising the list of hazardous substances) are authorized.


1. (a) The legislative rules filed in the state register on the second day of December, one thousand nine hundred eighty-two, relating to the commissioner of motor vehicles (denial of driving privileges), are authorized with the amendments set forth below:

   By inserting the words "licensed in the United States" after the phrase "physician of the applicant's choice," on page five, line two, and page seven, line one; and by striking out the words "licensed vision specialist" and inserting in lieu thereof the words "an optometrist or ophthalmologist licensed in the United States," on page five, line three, and on page seven, line two.

   These rules were proposed by the commissioner pursuant to section nine, article two, chapter seventeen-a and section six, article three-c, chapter seventeen-b of this code.

   (b) The legislative rules filed in the state register on the twentieth day of November, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (titling a vehicle) are authorized.

   (c) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred eighty-five, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, one thousand nine hundred eighty-five, relating to the commissioner of motor vehicles (eligibility for reinstatement following suspension or revocation of driving privileges) are authorized.


1. The legislative rules filed in the state register on the fifth

The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-five, relating to the commissioner of agriculture (increasing certain fees by rules and regulations) are authorized.


The legislative rules filed in the state register on the nineteenth day of April, one thousand nine hundred eighty-five, relating to the beef industry self-improvement assessment board (beef industry self-improvement assessment program) are authorized.


The legislative rules filed in the state register on the thirteenth day of January, one thousand nine hundred eighty-six, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of January, one thousand nine hundred eighty-six, relating to the commissioner of agriculture (licensing of livestock dealers) are authorized.

§64-2-20(1)(7). Department of natural resources.

(a) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred eighty-four, relating to the department of natural resources (public use of state parks, forests, hunting and fishing areas) are authorized.

(b) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred eighty-five, relating to the department of natural resources (WV/ NPDES regulations for the coal mining point source category and related sewage facilities) are authorized.

§64-2-20(5e)(6). Department of natural resources.

(a) The legislative rules filed in the state register on the
The legislative rules filed in the state register on the
sixth day of January, one thousand nine hundred eighty-
four, relating to the department of natural resources
(hazardous waste management) are authorized.

(b) The legislative rules filed in the state register on the
sixth day of January, one thousand nine hundred eighty-
four, relating to the air pollution control commission (to
prevent and control air pollution from hazardous waste
treatment, storage or disposal facilities) (series XXV) are
authorized with the amendments set forth below:

Page 3, §1.06, change the § title from "Enforcement" to
"Procedure"; place an "(a)" in front of the existing
paragraph and add the following:

"(b) Permit applications filed pursuant to this
regulation shall be processed in accordance with the
permitting procedures as set forth in code §20-5E of this
regulation. Permit procedures set forth in code §16-20 and
any other regulation of this commission are not applicable
to any permit application filed pursuant to this regulation."

Such rules shall also include a section which shall read as
follows:

"The commission shall report to the legislative rule-
making review committee as required by that committee,
but in no event later than the first day of the regular session
of the Legislature in the year one thousand nine hundred
eighty-five. Such report shall include information
regarding the commission's data gathering efforts, the
development of compliance programs, the progress in
implementation, and such other matters as the committee
may require, pertaining to the regulations hereby
authorized."

(c) The legislative rules filed in the state register on the
third day of December, one thousand nine hundred eighty-
four, modified by the department of natural resources to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the thirteenth
day of February, one thousand nine hundred eighty-five,
relating to the department of natural resources (hazardous
waste management), are authorized.

(d) The legislative rules filed in the state register on the
eleventh day of December, one thousand nine hundred
eighty-five, modified by the department of natural
resources to meet the objections of the legislative rule-
making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management) are authorized.

(e) The legislative rules filed in the state register on the fifth day of March, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management) are authorized.

(f) The legislative rules filed in the state register on the tenth day of October, one thousand nine hundred eighty-five, relating to the department of natural resources (hazardous waste management: Small quantity generators and waste minimization certification) are authorized with the amendments set forth below:

On page 1, §3.1.4b delete the word “or” in the reference to “paragraph (g) or (j)” and insert in lieu thereof the words “and, if applicable.”

§64-2-20(5e)(7). Department of highways.

(a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the commissioner of highways (transportation of hazardous waste by highway transporters) are authorized with the amendments set forth below:

Pages 3 and 7 after “40 CFR part 262” add the words “as amended through March 8, 1986,”

Page 7 after “49 CFR parts 171-179” add the words “as amended through March 8, 1986,” and

Page 11 after “49 CFR part 171.16” add the words “as amended through March 8, 1986.”

(b) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-four, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of highways (transportation of hazardous waste) are authorized with the amendment set forth below:

Page 5, by amending §3.01 by adding thereto a new subsection, designated subsection (4), to read as follows:
“(4) Before accepting hazardous waste from a rail transporter, a highway transporter must sign and date the manifest and provide a copy to the rail transporter.”

(c) The legislative rules filed in the state register on the twelfth day of December, one thousand nine hundred eighty-five, relating to the commissioner of highways (governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state) are authorized with the amendments set forth below:

On page 18, the first line of §3.03 shall read as follows:

“3.03. Transporters who only accept Hazardous Waste from”.

§64-2-23(1)(13). Workers’ compensation commissioner.

(a) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, relating to the workers’ compensation commissioner (time lists for the administration proceedings of adjudications and awards) are authorized.

(b) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-five, relating to the workers’ compensation commissioner (standards for medical examination in occupational pneumoconiosis claims) are authorized with the amendments set forth below:

On page 1, the second and third unnumbered paragraphs on page one are amended to read as follows:

When two or more ventilatory function tests performed in reasonably close proximity in time produce differing but acceptable results, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional testing at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the results are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis.

When blood gas studies are performed and abnormal values are obtained and thereafter new blood gas studies are performed and normal or significantly higher values are further obtained, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional
evidence and/or order additional studies at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the values are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis.

And on page 7, paragraph (11) is amended to read as follows:

(11) It is recognized that arterial blood gas studies done in laboratories throughout this state are obtained at different altitudes. Only by "standardizing" for altitude can an equitable assessment be made of impairment when values of arterial oxygen are being measured at remarkably different altitudes. Therefore, the results reported from laboratories should include the name of the laboratory and the date and time of the testing, altitude of the laboratory and barometric pressure at the laboratory on the day the samples were collected. The O. P. Board will evaluate the arterial blood gas values by converting those values to the average altitude of Charleston, West Virginia. For this purpose, it shall be sufficient to add 1 mmHg to each arterial oxygen tension for each 300 feet or fraction thereof that the testing laboratory is located above the average altitude of Charleston, because the relationship of barometric pressure (altitude) and alveolar oxygen is approximately linear up to 4,000 feet as long as the subject breathes room air.

As an example, Bluefield is located approximately 2,600 feet above sea level. Charleston is approximately 600 feet above sea level. Thus, arterial oxygen values obtained in Bluefield should have 6.67 mmHg added to them before applying the table to them to obtain "percent impairment."

The calculations are as follows:

"Bluefield (2,600') minus Charleston (600') equals 2,000' differential

2,000' divided by 300' altitude equals 6.67

6.67 multiplied by 1 mmHg per 300' altitude equals 6.67 mmHg”.

§64-2-23(4b)(6). Workers’ compensation commissioner.

The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred eighty-five,
modified by the workers’ compensation commissioner to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the fifteenth
day of January, one thousand nine hundred eighty-six,
relating to the workers’ compensation commissioner
(administration of the coal-workers' pneumoconiosis fund)
are authorized.

§64-2-29a(2)(6). Secretary of state.

The legislative rules filed in the state register on the
fifteenth day of April, one thousand nine hundred eighty-
five, modified by the secretary of state to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the eighth day of October,
one thousand nine hundred eighty-five, relating to the
secretary of state (standard size and format for rules and
related documents filed in the secretary of state’s office) are
authorized.

§64-2-30(3)(7). Board of medicine.

(a) The legislative rules filed in the state register on the
twelfth day of May, one thousand nine hundred eighty-
three, relating to the board of medicine (licensing,
disciplinary and complaint procedures; podiatry;
physicians assistants) are authorized with the
modifications set forth below:

§24.12.

(b) It shall be the responsibility of the supervising
physician to obtain consent in writing from the patient
before Type A physician assistants employed in a satellite
clinic may render general medical or surgical services,
except in emergencies.

§24.16.

(p) No physician assistant shall render nonemergency
outpatient medical services until the patient has been
informed that the individual providing care is a physician
assistant.”

(b) The legislative rules filed in the state register on the
twenty-sixth day of November, one thousand nine hundred
eighty-five, modified by the board of medicine to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the seventeenth day of
January, one thousand nine hundred eighty-six, relating to the board of medicine (licensing, disciplinary and complaint procedures; podiatry; physicians assistants) are authorized. These rules were proposed by the board of medicine pursuant to sections seven and sixteen, article three, chapter thirty of this code.

(c) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-five, modified by the West Virginia board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of December, one thousand nine hundred eighty-five, relating to the West Virginia board of medicine (rules governing the approval of medical schools not accredited by the liaison committee on medical education) are authorized. These rules were proposed by the West Virginia board of medicine pursuant to sections seven and ten, article three, chapter thirty of this code.

§64-2-30(3)(10). West Virginia board of medicine.

The rules authorized by the Legislature in subsection (a), section thirty (three) (seven) of this article were also proposed by the West Virginia board of medicine pursuant to section ten, article three, chapter thirty of this code.

§64-2-30(3)(16). Board of medicine.

The rules authorized by the Legislature in subsection (b), section thirty (three) (seven) of this article were also proposed by the board of medicine pursuant to section sixteen, article three, chapter thirty of this code.

§64-2-30(13)(5). State board of registration for professional engineers.

The legislative rules filed in the state register on the twenty-ninth day of November, one thousand nine hundred eighty-five, modified by the state board of registration for professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia board of registration for professional engineers (legislative rules governing the West Virginia state board of engineers).
10 registration for professional engineers) are authorized.


1 The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-five, modified by the nursing home administrators licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the nursing home administrators licensing board (governing nursing home administrators) are authorized.


1 The legislative rules filed in the state register on the twenty-sixth day of November, one thousand nine hundred eighty-five, modified by the West Virginia board of hearing aid dealers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia board of hearing aid dealers (rules governing the West Virginia board of hearing aid dealers) are authorized. These rules were proposed by the West Virginia board of hearing aid dealers pursuant to sections three and fifteen, article twenty-six, chapter thirty of this code.


1 The rules authorized by the Legislature in section thirty (twenty-six) (three) of this article were also proposed by the West Virginia board of hearing aid dealers pursuant to section fifteen, article twenty-six, chapter thirty of this 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.

(a) Whenever a deed of trust otherwise complying with the provisions of this article is clearly entitled at the beginning thereof either in capital letters or in language underscored, the words, "A CREDIT LINE DEED OF TRUST," the deed of trust shall be, from the time it is duly recorded as required by law, security for all indebtedness secured thereby at the time of recording and for all future advances secured thereby in an aggregate principal amount outstanding at any time not to exceed the maximum amount stated in the deed of trust, without regard to whether the future advances are contracted for at the time of recordation of the deed of trust or whether the secured party under the deed of trust rebates principal sums repaid. The deed of trust shall also be security for interest on the principal sums and for taxes, insurance premiums and other obligations, including interest thereon, undertaken by the secured party in the deed of trust or in the related loan agreement, note or other evidences of indebtedness secured thereby. The interest, taxes, insurance premiums and other obligations when added to the total principal amount of the loans outstanding at any time may increase the amount secured by the deed of trust above the stated maximum amount.

(b) A credit line deed of trust, in addition to other provisions of this code, shall conform with the following:

(1) The deed of trust shall contain specific provisions permitting or requiring future advances;

(2) At no time may the unpaid principal balance of indebtedness secured by the deed of trust exceed the maximum amount stated therein, except as specifically provided for in subsection (a) of this section; and

(3) The original deed of trust must be executed and recorded after the effective date of this section.

(c) Except as otherwise provided herein, the deed of trust to the extent of the principal amount of the loan secured thereby, interest thereon, taxes, insurance premiums and other obligations, including interest thereon,
secured thereby, has priority over all other deeds of trust, liens and encumbrances of every nature, however created or arising, to the same extent and for the same amount as if all the amounts were advanced immediately after the date and time the deed of trust is recorded.

(d) Any mechanic's lien, abstract of judgment, notice of lis pendens, other deed of trust or other lien of encumbrance, which affects the property encumbered by the credit line deed of trust and which is duly recorded and perfected as required by law after the recording of the credit line deed of trust, shall have priority over any optional or nonobligatory advances secured by the credit line deed of trust and made by the secured party under the credit line deed of trust after receipt by the secured party, at the address provided for the purpose in the credit line deed of trust, of written notice of such mechanic's lien, judgment lien, notice of lis pendens, other deed of trust or other lien or encumbrance. However, any obligatory advances which the secured party contracted to make by written agreement entered into with the obligor whose indebtedness is secured by the deed of trust, prior to receipt of this written notice, and any taxes, insurance premiums and obligations which the secured party has agreed to pay, or which under the deed of trust or otherwise the secured party has the right to pay in connection with such deed of trust, shall continue to have the priority created under subsection (a) of this section over a mechanic's lien, judgment lien, notice of lis pendens, deed of trust or other lien or encumbrance. For the purposes of this section, an "obligatory advance" means any advance of principal which the secured party under the deed of trust is legally obligated to make in the absence of the occurrence of a specific event under the deed of trust or related loan agreement or note, by a specified date or time or upon application therefor by the grantor under the deed of trust or by another obligor whose indebtedness is secured by the deed of trust.

(e) Notwithstanding any other provision of this code, the secured party under a credit line deed of trust subject to this section shall be obligated to release the deed of trust at such time as all indebtedness secured thereby has...
be paid in full and the secured party has been duly released from any further obligation to make future advances under any note or agreement secured by the deed of trust. This release shall become effective upon the recording of the release and the secured party shall be 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.


1 Upon the renewal of a loan agreement in the instance when no additional principal is advanced, the original deed of trust is sufficient for the purpose of securing the 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,
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 created, the county economic development program or the county economic development agency.

(b) “Eligible lending institution” means a financial institution that is eligible to make commercial loans, is a public depository of county funds and agrees to participate in the linked deposit program.

(c) “Eligible small business” means any business which employs fifty or fewer employees or has gross annual receipts of two million dollars or less.

(d) “Linked deposit” means a certificate of deposit placed by the agent with an eligible lending institution at up to and including five percent below current
market rates, as determined and calculated by the
agent, provided the institution agrees to lend the value
of such deposit, according to the deposit agreement
provided for by this article, to eligible small businesses
at up to and including five percent below the present
borrowing rate applicable to each specific business at
the time of the deposit of county funds in the institution.

§7-19-2. Legislative findings.

The Legislature finds that many small businesses
throughout the state are experiencing economic stagna-
tion or decline, that high interest rates have caused
small businesses in this state to suffer disproportionately
in profitability and competition and that such high
interest rates have fostered a serious increase in
unemployment. The linked deposit program provided
for by this article is intended to provide a countywide
availability of lower cost funds for lending purposes that
will materially contribute to the economic revitalization
of this state. Accordingly, it is declared to be the public
policy of the state to create through the linked deposit
program an availability of lower-cost funds to inject
needed capital into the business community, sustain or
improve business profitability and protect the jobs of
citizens of this state. This program is created to
supplement the state linked deposit program.

§7-19-3. Authority to invest; limitations on investment in
linked deposits; loan cap.

County commissions are hereby authorized and
empowered, in addition to all other powers and duties
now conferred by law upon county commissions, to
invest in linked deposits: Provided, That at the time of
placement of the linked deposit not more than ten
percent of the county's total investment portfolio is so
invested. The amount of a reduced rate loan may not
exceed ten thousand dollars per job created or preserved
as determined by the agent, subject to the availability
of funds. This program is created to supplement the
state linked deposit program and the agent is authorized
to coordinate county linked deposits with the state
program.
§7-19-4. Applications for loan; priorities; loan package.

(a) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small businesses. The lending institution shall apply all usual lending standards to determine the credit worthiness of each eligible small business making an application.

(b) An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities. A reduced rate loan shall not be used to refinance existing debt, unless such action is done to prevent bankruptcy. Whoever knowingly makes a false statement concerning such application shall be prohibited from participating in the linked deposit loan program and shall be subject to the penalties provided for in section eight of this article.

(c) In considering which eligible small businesses should receive reduced rate loans, the eligible lending institution shall give priority to businesses in areas which are economically depressed and to the number of jobs to be created or preserved by the receipt of such loan.

(d) The eligible lending institution shall forward to the agent a linked deposit loan package, in the form and manner prescribed by the agent. The package shall include such information as required by the agent, including the amount of the loan requested and the number of jobs to be created or sustained by each eligible small business. The institution shall certify that each applicant is an eligible small business, and shall certify the present borrowing rate applicable to each specific eligible business.

§7-19-5. Acceptance or rejection of loan package; deposit agreement.

(a) The agent may accept or reject a linked deposit loan package or any portion thereof, based on the ratio of county funds to be deposited to jobs to be sustained or created.
(b) Upon acceptance of the linked deposit loan package or any portion thereof, the agent may place certificates of deposit with the eligible lending institution at up to and including five percent below current market rates as determined by the agent. When necessary, the agent may place certificates of deposit prior to acceptance of a linked deposit loan package.

(c) The eligible lending institution shall enter into a deposit agreement with the agent, which agreement shall include requirements necessary to carry out the purposes of this article. Such requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement may include a specification of the period of time in which the lending institution is to lend funds upon the placement of a linked deposit and shall include provisions for the certificates of deposit to be placed for up to two-year maturities that may be renewed for up to an additional two years. Interest shall be paid at the times determined by the agent.

§7-19-6. Rate of loan; certification and monitoring of compliance; reports.

(a) Upon the placement of a linked deposit with an eligible lending institution, such institution is required to lend such funds to each approved eligible small business listed in the linked deposit loan package required in subsection (d), section four of this article, and in accordance with the deposit agreement required by subsection (c), section five of this article. The loan shall be at up to and including five percent below the present borrowing rate applicable to each business. A certification of compliance with this section shall be required of the eligible lending institution in the form and manner prescribed by the agent.

(b) The agent shall take any and all steps necessary to implement the linked deposit program and monitor compliance of eligible lending institutions and eligible small businesses. The agent, the state treasurer and the industrial development authority shall notify each other at least quarterly of the names of the businesses
receiving financial assistance from their respective programs.

By the first day of January, April, July and October of each year, the agent shall report on the linked deposit program from the preceding calendar quarter to the county commission. The report shall set forth the linked deposits made by the county under the program during the quarter and shall include information regarding the nature, terms and amounts of the loans upon which the linked deposits were based and each small business to which a loan was made.

§7-19-7. Liability of the county commission or its agent.

Neither the county commission or its agent is liable in any manner to any eligible lending institution for payment of the principal or interest on the loan to an eligible small business. A delay in payment or default on the part of an eligible small business does not in any manner affect the deposit agreement between the eligible lending institution and the county.

§7-19-8. Penalties for violation of article.

Any violation of this article shall be deemed a misdemeanor and any person convicted thereof shall be fined not less than one hundred nor more than five hundred dollars and imprisoned in the county jail not 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 IA. LINKED DEPOSIT PROGRAM.

§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 deposit not more than ten percent of the state’s total investment portfolio is so invested. The total amount so deposited at any one time shall not exceed, in the aggregate, two hundred twenty-five million dollars, of which fifty million dollars shall be provided for linked deposits to West Virginia flood victims from the twenty-nine counties eligible for federal disaster aid as listed by the federal 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 deposit loan package or any portion thereof, based on the ratio of state funds to be deposited to jobs sustained or created.
2 (b) The state treasurer shall reject any linked deposit loan package if the small business requesting such loan is not in good standing with the state tax department, department of employment security and the workers’ compensation fund, and these agencies shall provide the state treasurer with such information as to the standing of each small business loan applicant, notwithstanding any provision of this code to the contrary.
3 (c) Any linked deposit loan package that is being made to refinance an existing debt, or any portion thereof, must meet one of the following criteria:
4 (1) The small business can demonstrate in good faith
that it is experiencing a substantial loss in its current (fiscal or calendar) tax year period;

(2) The small business recently experienced a natural disaster and suffered unreimbursable casualty losses;

(3) The small business has filed to recover under the federal bankruptcy act and meets the criteria in (1) above; or

(4) The small business can provide compelling information to the state treasurer that jobs will be saved and/or created as a result of loan refinancing.

(d) Upon acceptance of the linked deposit loan package or any portion thereof, the state treasurer may place certificates of deposit with the eligible lending institution at three percent below current market rates, as determined and calculated by the state treasurer. Upon acceptance of the linked deposit loan package for flood victims or any portion thereof, the state treasurer may place certificates of deposit with the eligible lending institution at five percent below current market rates, as determined and calculated by the state treasurer. When necessary, the treasurer may place certificates of deposit prior to acceptance of a linked deposit loan package.

(e) The eligible lending institution shall enter into a deposit agreement with the state treasurer, which shall include requirements necessary to carry out the purposes of this article. Such requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement may include a specification of the period of time in which the lending institution is to lend funds upon the placement of a linked deposit and shall include provisions for the certificates of deposit to be placed for up to two-year maturities that may be renewed for up to an additional two years. Interest shall be paid at the times determined by the state treasurer.

§12-1A-6. Rate of loan; certification and monitoring of compliance; report.

(a) Upon the placement of a linked deposit with an eligible lending institution, such institution is required to lend such funds to each approved eligible small business listed in the linked deposit loan package required in subsection (d), section four of this article, and in accordance
with the deposit agreement required by subsection (e), section five of this article. The loan shall be at three percent below the present borrowing rate applicable to each business. The loan shall be at five percent below the present borrowing rate applicable to each flood victim. A certification of compliance with this section in the form and manner as prescribed by the state treasurer shall be required of the eligible lending institution.

(b) The state treasurer shall take any and all steps necessary to implement the linked deposit program and monitor compliance of eligible lending institutions and eligible small businesses. The state treasurer and the industrial development authority shall notify each other at least quarterly of the names of the businesses receiving financial assistance from their respective programs.

By the first day of January, April, July and October of each year, the treasurer shall report on the linked deposit program for the preceding calendar quarter to the governor and to the joint committee on government and finance. The reports shall set forth the linked deposits made by the state treasurer under the program during the quarter and shall include information regarding the nature, terms and amounts of the loans upon which the linked deposits were based and the eligible small business to which the loans were made.

§12-1A-8. Penalties for violation of article.

Any violation of this article shall be deemed a misdemeanor and any person convicted thereof shall be fined not less than one hundred nor more than five hundred dollars and imprisoned in the county jail not less than one 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.


§50-1-8. Magistrate court clerks; salary; duties; duties of circuit clerk.


§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 population there shall be elected two magistrates; except that in the county of Putnam there shall be elected three magistrates. In each county which has thirty thousand or more in population but less than sixty thousand in population there shall be elected three magistrates; except that in the counties of McDowell and Fayette there shall be elected four magistrates, with the fourth magistrate position hereby created for Fayette County not to be subject to being filled by prior appointment, but with service to begin in January, one thousand nine hundred eighty-seven, after initial election at general election in the fall of one thousand nine hundred eighty-six, and in the county of Brooke there shall be elected two magistrates. In each county which has sixty thousand or more in population but less than one hundred five thousand in population there shall be elected four magistrates; except that in the counties of Raleigh and Mercer there shall be elected five magistrates with the fifth magistrate position hereby created for Mercer County to be subject to being filled by prior appointment on and after the first day of July, one
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23 thousand nine hundred eighty-six, and until the subsequent general election therefor. In each county which has one hundred five thousand or more in population but less than two hundred thousand in population there shall be elected seven magistrates. In each county which has two hundred thousand or more in population there shall be elected ten magistrates. For the purpose of this article, the population of each county shall be considered to be the population as determined by the last preceding census taken under the authority of the United States government. No change in the number of magistrates caused by the publication of more recent such census figures shall be effective until the next regular election for such office occurring after the year of such publication.


1 The salary of each magistrate shall be paid by the state. Beginning on the first day of July, one thousand nine hundred eighty-four, magistrates who serve less than ten thousand in population shall be paid annual salaries of seventeen thousand two hundred fifty dollars; magistrates who serve ten thousand or more in population but less than fifteen thousand in population shall be paid annual salaries of twenty thousand six hundred twenty-five dollars: Provided, That magistrates in the county of Putnam shall be paid annual salaries of twenty thousand six hundred twenty-five dollars. Magistrates who serve fifteen thousand or more in population shall be paid annual salaries of twenty-five thousand one hundred twenty-five dollars: Provided, however, That magistrates in the counties of Boone, Preston, Jefferson, Mercer and Fayette shall be paid annual salaries of twenty-five thousand one hundred twenty-five dollars. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. Magistrates shall be paid once a month.

*§50-1-8. 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.
judge of the circuit court or the chief judge thereof, if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties such judge may appoint a magistrate court clerk or may by rule require the duties of the magistrate court clerk to be performed by the clerk of the circuit court, in which event such circuit court clerk shall be entitled to additional compensation in the amount of two thousand five hundred dollars per year. The magistrate court clerk shall serve at the will and pleasure of such circuit judge.

Magistrate court clerks shall be paid a monthly salary by the state. Beginning on the first day of July, one thousand nine hundred eighty-four, magistrate court clerks serving magistrates who serve less than ten thousand in population shall be paid up to nine hundred eighty-one dollars per month; magistrate court clerks serving magistrates who serve ten thousand or more in population but less than fifteen thousand in population shall be paid up to one thousand two hundred forty-one dollars per month: Provided, That the magistrate court clerk in the county of Putnam shall be paid up to one thousand two hundred forty-one dollars per month; and magistrate court clerks serving magistrates who serve fifteen thousand or more in population shall be paid up to one thousand five hundred sixteen dollars per month: Provided, however, That the magistrate court clerks in the counties of Boone, Preston, Jefferson, Mercer, Fayette and Raleigh shall be paid up to one thousand five hundred sixteen dollars per month. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate court clerk shall be established by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, within the limits set forth in this section.

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

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

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

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

(1) The preparation of summons in civil actions;
(2) The assignment of civil actions to the various
magistrates;
(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.
and penalties which may be payable to the court;

(4) The submission of such moneys, along with an accounting thereof to appropriate authorities as provided by law;

(5) The daily disposition of closed files which are to be located in the magistrate clerk's office;

(6) All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court;

(7) All duties relating to the notification, certification and payment of jurors serving pursuant to the terms of this chapter;

(8) All other duties or responsibilities whereby the magistrate assistant shall be accountable to the magistrate court clerk as the magistrate shall determine.

Magistrates assistants shall be paid a monthly salary by the state. Beginning on the first day of July, one thousand nine hundred eighty-four, magistrate assistants serving magistrates who serve less than ten thousand in population shall be paid up to seven hundred eighty-eight dollars per month; magistrate assistants serving magistrates who serve ten thousand or more in population but less than fifteen thousand in population shall be paid up to nine hundred seventeen dollars per month: Provided, That magistrate assistants in the county of Putnam shall be paid up to nine hundred seventeen dollars per month; and magistrate assistants serving magistrates who serve fifteen thousand or more in population shall be paid up to one thousand forty-five dollars per month: Provided, however, That magistrate assistants in the counties of Boone, Preston, Jefferson, Mercer, Fayette and Raleigh shall be paid up to one thousand forty-five dollars per month.

For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population
of each county. The salary of the magistrate assistant shall be established by the magistrate within the limits set forth in this section.

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

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

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

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


§50-1-9b. 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 judge of the circuit court or the chief judge thereof, if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties such judge may appoint a magistrate court clerk or may by rule require the duties of the magistrate court clerk to be performed by the clerk of the circuit court, in which event such circuit court clerk shall be entitled to additional compensation in the amount of two thousand five hundred dollars per year. The magistrate court clerk shall serve at the will and pleasure of such circuit judge.

13 Magistrate court clerks shall be paid a monthly salary 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
clerks serving magistrates who serve less than ten
thousand in population shall be paid up to one thousand
thirty-one dollars per month; magistrate court clerks
serving magistrates who serve ten thousand or more in
population but less than fifteen thousand in population
shall be paid up to one thousand two hundred ninety-
one dollars per month: Provided, That the magistrate
court clerk in the county of Putnam shall be paid up to
one thousand two hundred ninety-one dollars per month;
and magistrate court clerks serving magistrates who
serve fifteen thousand or more in population shall be
paid up to one thousand five hundred sixty-six dollars
per month: Provided, however, That the magistrate court
clerks in the counties of Boone, Preston, Jefferson,
Mercer, Fayette and Raleigh shall be paid up to one
thousand five hundred sixty-six dollars per month. For
the purpose of determining the population served by
each magistrate, the number of magistrates authorized
for each county shall be divided into the population of
each county. The salary of the magistrate court clerk
shall be established by the judge of the circuit court, or
the chief judge thereof if there is more than one judge
of the circuit court, within the limits set forth in this
section.

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

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

*§50-1-9. Magistrate assistants; salary; duties.

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

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

1. The preparation of summons in civil actions;
2. The assignment of civil actions to the various magistrates;
3. The collection of all costs, fees, fines, forfeitures and penalties which may be payable to the court;
4. The submission of such moneys, along with an accounting thereof to appropriate authorities as provided by law;
5. The daily disposition of closed files which are to be located in the magistrate clerk’s office;
6. All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court;

*NOTE: This section was also amended by H. B. 1140, which passed prior to this act.
(7) All duties relating to the notification, certification
and payment of jurors serving pursuant to the terms of
this chapter;

(8) All other duties or responsibilities whereby the
magistrate assistant shall be accountable to the magis­
trate court clerk as the magistrate shall determine.

Magistrate assistants shall be paid a monthly salary
by the state. Beginning on the first day of July, one
thousand nine hundred eighty-six, magistrate assistants
serving magistrates who serve less than ten thousand in
population shall be paid up to eight hundred thirty-eight
dollars per month; magistrate assistants serving mag­
istrates who serve ten thousand or more in population
but less than fifteen thousand in population shall be paid
up to nine hundred sixty-seven dollars per month:

Provided, That magistrate assistants in the county of
Putnam shall be paid up to nine hundred sixty-seven
dollars per month; and magistrate assistants serving
magistrates who serve fifteen thousand or more in
population shall be paid up to one thousand ninety-five
dollars per month: Provided however, That magistrate
assistants in the counties of Boone, Preston, Jefferson,
Mercer, Fayette and Raleigh shall be paid up to one
thousand ninety-five dollars per month. For the purpose
of determining the population served by each magis­
trate, the number of magistrates authorized for each
county shall be divided into the population of each
county. The salary of the magistrate assistant shall be
established by the magistrate within the limits set forth
in this section.

§50-1-9b. Putnam and Raleigh counties—Salaries of
clerks, deputy clerks, magistrate assistants,
for certain periods prior to July 1, 1986.

(a) The Legislature finds and declares:

(1) That during the regular session of the Legislature,
one thousand nine hundred eighty, it adopted certain
amendments to sections two, three, eight, nine and
eleven of this article in an act designated chapter eighty,
acts of the Legislature, regular session, one thousand
nine hundred eighty;
That included within the provisions of that act were provisions specifically increasing the number of magistrates for the counties of Putnam and Raleigh whereby the Legislature provided for the election of three magistrates for the county of Putnam and five magistrates for the county of Raleigh;

That it has come to the attention of the Legislature that the fact of increasing the number of magistrates in the counties of Putnam and Raleigh has been interpreted as necessitating a decrease in the respective salaries of the magistrate court clerks, magistrate assistants and magistrate court deputy clerks, in those counties effective the first day of January, one thousand nine hundred eighty-one; and

That it was not the intent of the Legislature in enacting the provisions of chapter eighty, acts of the Legislature, regular session, one thousand nine hundred eighty, to reduce the salaries of magistrate court clerks, magistrate assistants and magistrate court deputy clerks in the counties of Putnam and Raleigh.

Therefore, in view of the foregoing findings, it is the intent of the Legislature in enacting this section to restore the respective salaries of the magistrate court clerks, magistrate assistants and magistrate court deputy clerks in the counties of Putnam and Raleigh to those sums which were applicable to those various positions prior to the first day of January, one thousand nine hundred eighty-one, retroactively to that date.

(b) In view of the foregoing findings and purposes, effective the first day of January, one thousand nine hundred eighty-one, the respective salaries for magistrate court clerks, magistrate assistants and magistrate court deputy clerks in the counties of Putnam and Raleigh shall be as follows:

(1) The salary for the magistrate court clerk in the county of Putnam shall be up to one thousand twenty-six dollars per month;

(2) The salary for the magistrate court clerk in the county of Raleigh shall be up to one thousand two
(3) The salary for each magistrate assistant in the county of Putnam shall be up to seven hundred forty-one dollars per month;

(4) The salary for each magistrate assistant in the county of Raleigh shall be up to eight hundred fifty-five dollars per month; and

(5) The salaries of the various magistrate court deputy clerks for the counties of Putnam and Raleigh shall be in amounts up to and not exceeding the amounts paid to the magistrate assistants in those respective counties.

(c) Effective the first day of July, one thousand nine hundred eighty-six, the maximum allowable salaries of magistrate court clerks, magistrate assistants and magistrate court deputy clerks in the counties of Putnam and Raleigh shall be the amounts set forth in 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.

Every license for marriage shall be issued by the clerk of the county commission of the county in which either party usually resides, except that where both parties are nonresidents of the state of West Virginia, the license shall be issued by the clerk of the county commission of the county in which application is made. Such license shall be issued not sooner than three days after the filing with said clerk of a written application therefor. The day upon which such application is filed shall be counted as the first day, but two full days shall elapse after the day of such filing before the license shall be issued.

Before any such license is issued each applicant therefor shall file with the clerk a certificate or certificates from any physician duly licensed in the state, stating that each party thereto has been given such examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than thirty days prior to the date on which such license is issued, and stating that in the opinion of the physician the person therein named either is not infected with syphilis or, if so infected, is not in the state of the disease which is or may later become communicable. Such examinations and tests as are required hereunder may be given as provided by section nineteen, article four, chapter sixteen of this code.

The application for a marriage license shall contain a statement of the full names of both parties, their social security account numbers, and their respective ages and their places of birth and residence. It shall be signed by both of the parties to the contemplated marriage, under oath before the clerk of the county commission or before a person authorized to administer oaths under the laws of this state. At the time of the execution of such application, the clerk, or the person administering the oath to the applicants, shall require some evidence of the age of each of the applicants. Evidence of the age of each applicant may be in the form of a certified or photostatic copy of a birth certificate, a voter's registration 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.
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.

1 Every two years the board shall elect from among its members a president and vice president. Regular meetings shall be held as scheduled by the rules and regulations of the board. Special meetings of the board may be called by the joint action of the president and vice president or by any three members of the board on seven days' prior written notice by mail or, in case of emergency, on two days' notice by telephone. With the exception of the state director of health, members of the board shall receive one hundred dollars for each day actually spent in attending the sessions of the board or its committees. A board member shall be reimbursed for all reasonable and necessary expenses actually incurred when a meeting is held in a location that is removed from the member's place of residence.

2 A majority of the membership of the board constitutes a quorum for the transaction of business, and business is transacted by a majority vote of a quorum. except for
disciplinary actions which shall require the affirmative
vote of not less than five members or a majority vote of those
present, whichever is greater.

Meetings of the board shall be held in public session,
except that the board may hold closed sessions to prepare,
approve, grade or administer examinations. Disciplinary
proceedings, prior to a finding of probable cause as
provided in subsection (o), section fourteen of this article,
shall be held in closed sessions, unless the party subject to
discipline requests that the hearing be held in public
session.

§30-3-9. Records of board; expungement; examination;
confidentiality; release of records; criminal
penalties for unauthorized disclosure; physician-
patient privilege.

(a) The board shall maintain a permanent record of the
names of all physicians and podiatrists licensed or
otherwise lawfully practicing in this state and of all persons
applying to be so licensed to practice, along with an
individual historical record for each such individual
containing reports and all other information furnished the
board under this article or otherwise. Such record may
include, in accordance with rules established by the board,
additional items relating to the individual's record of
professional practice that will facilitate proper review of
such individual's professional competence.

(b) Upon a determination by the board that any report
submitted to it is without merit, the report shall be
expunged from the individual's historical record.

(c) A physician, podiatrist or applicant, or authorized
representative thereof, has the right, upon request, to
examine his own individual historical record maintained by
the board pursuant to this article and to place into such
record a statement of reasonable length of his own view of
the correctness or relevance of any information existing in
such record. Such statement shall at all times accompany
that part of the record in contention.

(d) A physician, podiatrist or applicant has the right to
seek through court action the amendment or expungement
of any part of his historical record.

(e) A physician, podiatrist or applicant shall be
provided written notice within thirty days of the placement
and substance of any information in his individual
historical record that pertains to him and that was not
submitted to the board by him.

(f) Except for information relating to biographical
background, education, professional training and practice,
prior disciplinary action by any entity and information
contained on the licensure application, the board shall
expunge information in an individual's historical record
unless it has initiated a proceeding for a hearing upon such
information within two years of the placing of the
information into the historical record.

(g) Any reports, information or records received and
maintained by the board pursuant to this article, including
any such material received or developed by the board
during any investigation or hearing, shall be strictly
confidential. The board may only disclose any such
confidential information in the following circumstances:

(1) In an examination or disciplinary hearing
sanctioned by the board or in any subsequent trial or appeal
of a board action or order;

(2) To physician or podiatrist licensing or disciplinary
authorities of other jurisdictions, medical peer review
committees, hospital governing bodies or other hospital or
medical staff committees located within or outside this
state which are concerned with granting, limiting or
denying a physician or podiatrist hospital privileges:
Provided, That the board shall include along with any such
disclosure an indication as to whether or not such
information has been substantiated;

(3) Pursuant to an order of a court of competent
jurisdiction;

(4) To qualified personnel for bona fide research or
educational purposes, if personally identifiable
information relating to any patient or physician is first
deleted; and

(5) Pursuant to the provisions of subsection (o), section
fourteen of this article.

(h) Orders of the board relating to disciplinary action
against a physician or podiatrist are public information.

(i) Confidential information received, maintained or
developed by the board or disclosed by the board to others
as provided for in this article shall not be available for
discovery or court subpoena or be introduced into evidence
in any medical professional liability action or other action
for damages arising out of the provision of or failure to
provide health care services: Provided, That following the
final action of the board in any disciplinary proceeding,
such information may be released upon order of a court in a
pending medical professional liability action upon a
showing that the party seeking such information has
substantial need for such information and would otherwise
be unable, without undue hardship, to obtain the
substantial equivalent of the information.

(j) Any person who discloses confidential information
possessed by the board in violation of the provisions of this
article is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not more than one thousand dollars,
or imprisoned in the county jail not more than one year, or
both fined and imprisoned.

(k) Any physician-patient privilege does not apply in
any investigation or proceeding by the board or by a
medical peer review committee or by a hospital governing
board with respect to relevant hospital medical records,
while any of the aforesaid are acting within the scope of
their authority: Provided, That the disclosure of any
information pursuant to this provision shall not be
considered a waiver of any such privilege in any other
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.

(a) The board may independently initiate disciplinary
proceedings as well as initiate disciplinary proceedings
based on information received from medical peer review
committees, physicians, podiatrists, hospital
administrators, professional societies and others.

The board shall initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified if the board receives notice that five or more judgments or settlements arising from medical professional liability have been rendered or made against such physician or podiatrist.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of such requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board’s investigation. In the event that copies are so provided, the subject physician or podiatrist is allowed fifteen days to comment on the requested information and such comments must be considered by the board.

After the completion of a hospital’s formal disciplinary procedure and after any resulting legal action, the chief executive officer of such hospital shall report in writing to the board within sixty days the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall report in writing to the board within sixty days of a final decision the name of such member, together with all pertinent
information relating to such action.

Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to a physician or podiatrist in this state shall submit to the board the following information within thirty days from any judgment, dismissal or settlement of a civil action or of any claim involving the insured: The date of any judgment, dismissal or settlement; whether any appeal has been taken on the judgment, and, if so, by which party; the amount of any settlement or judgment against the insured; and such other information as the board may require.

Within thirty days after a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery or podiatry in this state or applying to be so licensed is convicted of a felony under the laws of this state, or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of such physician or podiatrist or applicant, the nature of the offense committed and the final judgment and sentence of the court.

Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. After reviewing the record of such hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than one thousand dollars nor more than ten thousand dollars against such violator. Anyone so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the
assessment. If the violator fails to pay the amount of the assessment to the board within thirty days, the attorney general may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any such civil action, the court’s review of the board’s action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

Any person may report to the board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of such person amounts to professional malpractice or professional incompetence.

The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of physicians or podiatrists to suspend, restrict or revoke the privileges or membership of such physician or podiatrist.

(c) The board may deny an application for license or other authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:

(1) Attempting to obtain, obtaining, renewing or attempting to renew a license to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation or through known error of the board.

(2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude or directly relates to the practice of medicine. Any plea of nolo contendere is a conviction for the purposes of this subdivision.

(3) False or deceptive advertising.

(4) Aiding, assisting, procuring or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law.

(5) Making or filing a report that the person knows to be
false; intentionally or negligently failing to file a report or
record required by state or federal law; willfully impeding
or obstructing the filing of a report or record required by
state or federal law; or inducing another person to do any of
the foregoing. Such reports and records as are herein
covered mean only those that are signed in the capacity as a
licensed physician or podiatrist.

(6) Requesting, receiving or paying directly or
indirectly a payment, rebate, refund, commission, credit or
other form of profit or valuable consideration for the
referral of patients to any person or entity in connection
with providing medical or other health care services or
clinical laboratory services, supplies of any kind, drugs,
medication or any other medical goods, services or devices
used in connection with medical or other health care
services.

(7) Unprofessional conduct by any physician or
podiatrist in referring a patient to any clinical laboratory or
pharmacy in which the physician or podiatrist has a
proprietary interest unless such physician or podiatrist
discloses in writing such interest to the patient. Such
written disclosure shall indicate that the patient may
choose any clinical laboratory for purposes of having any
laboratory work or assignment performed or any pharmacy
for purposes of purchasing any prescribed drug or any other
medical goods or devices used in connection with medical or
other health care services.

As used herein, "proprietary interest" does not include an
ownership interest in a building in which space is leased to a
clinical laboratory or pharmacy at the prevailing rate under
a lease arrangement that is not conditional upon the income
or gross receipts of the clinical laboratory or pharmacy.

(8) Exercising influence within a patient-physician
relationship for the purpose of engaging a patient in sexual
activity.

(9) Making a deceptive, untrue or fraudulent
representation in the practice of medicine and surgery or
podiatry.

(10) Soliciting patients, either personally or by an
agent, through the use of fraud, intimidation or undue
influence.

(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
alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he can resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the board shall be used against the physician or podiatrist in any other proceeding.

(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same effect as a verdict or plea of guilt.

(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Any such report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within ninety days of any such referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full investigation shall take whatever action it deems appropriate, as provided herein.

(f) The investigating body, as provided for in subsection (e) of this section, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to any such examination has the right, at his expense, to designate another physician to be...
present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is deemed to have given his consent to submit to all such examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to any such examination under circumstances which the board finds are not beyond his control, such failure or refusal is prima facie evidence of his inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

(g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action, the board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all such hearings. A transcript of all hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his expense. The physician or podiatrist has the right to defend against any such charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross-examine witnesses and the right to have subpoenas and subpoenas duces tecum issued on his behalf for the attendance of witnesses and the production of documents. The board shall make all its final actions public. The order shall contain the terms of all action taken by the board.

(i) Whenever it finds any person unqualified because of any of the grounds set forth in subsection (c) of this section,
the board may enter an order imposing one or more of the following:

1. Deny his application for a license or other authorization to practice medicine and surgery or podiatry;
2. Administer a public reprimand;
3. Suspend, limit or restrict his license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of such person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;
4. Revoke his license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances;
5. Require him to submit to care, counseling or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;
6. Require him to participate in a program of education prescribed by the board;
7. Require him to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and
8. Assess a civil fine of not less than one thousand dollars nor more than ten thousand dollars.

(j) Notwithstanding the provisions of section eight, article one, chapter thirty of this code, if the board determines the evidence in its possession indicates that a physician’s or podiatrist’s continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided for in subsection (i) of this section on a temporary basis and without a hearing, if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within fifteen days of such action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.

(k) Any person against whom disciplinary action is taken pursuant to the provisions of this article has the right to judicial review as provided in articles five and six, chapter twenty-nine-a of this code. Except with regard to an order of temporary suspension of a license for six months or less, a person shall not practice medicine and surgery or
podiatry or deliver health care services in violation of any disciplinary order revoking or limiting his license while any such review is pending. Within sixty days, the board shall report its final action regarding restriction, limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice privileges or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American medical association, the American podiatry association, professional societies of physicians or podiatrists in the state and any entity responsible for the fiscal administration of medicare and medicaid.

(l) Any person against whom disciplinary action has been taken under the provisions of this article shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation or restriction period, the physician or podiatrist has the right to resume practice pursuant to the orders of the board: Provided, That for a revocation pursuant to subsection (d) of this section a reapplication shall not be accepted for a period of at least five years.

(m) Any entity, organization or person, including the board, any member of the board, its agents or employees and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross negligence in making any report or other information available to the board or a medical peer review committee pursuant to law and any person acting without malice and without gross negligence who assists in the organization, investigation or preparation of any such report or information or assists the board or a hospital governing body or any such committee in carrying out any of its duties or functions provided by law, is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the board is a misdemeanor as provided for in this article.
A physician or podiatrist may request in writing to the board a limitation on or the surrendering of his license to practice medicine and surgery or podiatry or other appropriate sanction as provided herein. The board may grant such request and, if it considers it appropriate, may waive the commencement or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection has a right at reasonable intervals to petition for removal of any restriction or limitation on or for reinstatement of his license to practice medicine and surgery or podiatry.

In every case considered by the board under this article regarding discipline or licensure, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of disqualification due to any reason set forth in subsection (c) of this section. If such probable cause is found to exist, all proceedings on such charges shall be open to the public who shall be entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken: Provided, That any medical records, which were introduced at such hearing and which pertain to a person who has not expressly waived his right to the confidentiality of such records; shall not be open to the public nor is the public entitled to such records. If a finding is made that probable cause does not exist, the public has a right of access to the complaint or other document setting forth the charges, the findings of fact and conclusions supporting such finding that probable cause does not exist, if the subject physician 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.

(a) The board may independently initiate suspension or revocation proceedings as well as initiate suspension or
revocation proceedings based on information received from any person.

The board shall initiate investigations as to professional incompetence or other reasons for which a licensed osteopathic physician and surgeon may be adjudged unqualified if the board receives notice that five or more judgments or settlements arising from medical professional liability have been rendered or made against such osteopathic physician.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any osteopathic physician known to that medical peer review committee. Copies of such requests for information from a medical peer review committee may be provided to the subject osteopathic physician if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are so provided, the subject osteopathic physician is allowed fifteen days to comment on the requested information and such comments must be considered by the board.

After the completion of a hospital's formal disciplinary procedure and after any resulting legal action, the chief executive officer of such hospital shall report in writing to the board within sixty days the name of any member of the medical staff or any other osteopathic physician practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any osteopathic physician by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

Any professional society in this state comprised primarily of osteopathic physicians or physicians and surgeons of other schools of medicine which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice,
moral turpitude or drug or alcohol abuse, shall report in
writing to the board within sixty days of a final decision the
name of such member, together with all pertinent
information relating to such action.

Every person, partnership, corporation, association,
insurance company, professional society or other
organization providing professional liability insurance to
an osteopathic physician in this state shall submit to the
board the following information within thirty days from
any judgment, dismissal or settlement of a civil action or of
any claim involving the insured: The date of any judgment,
dismissal or settlement; whether any appeal has been taken
on the judgment and, if so, by which party; the amount of
any settlement or judgment against the insured; and such
other information as the board may require.

Within thirty days after a person known to be an
osteopathic physician licensed or otherwise lawfully
practicing medicine and surgery in this state or applying to
be so licensed is convicted of a felony under the laws of this
state, or of any crime under the laws of this state involving
alcohol or drugs in any way, including any controlled
substance under state or federal law, the clerk of the court
of record in which the conviction was entered shall forward
to the board a certified true and correct abstract of record of
the convicting court. The abstract shall include the name
and address of such osteopathic physician or applicant, the
nature of the offense committed and the final judgment and
sentence of the court.

Upon a determination of the board that there is probable
cause to believe that any person, partnership, corporation,
association, insurance company, professional society or
other organization has failed or refused to make a report
required by this subsection, the board shall provide written
notice to the alleged violator stating the nature of the
alleged violation and the time and place at which the
alleged violator shall appear to show good cause why a civil
penalty should not be imposed. The hearing shall be
conducted in accordance with the provisions of article five,
chapter twenty-nine-a of this code. After reviewing the
record of such hearing, if the board determines that a
violation of this subsection has occurred, the board shall
assess a civil penalty of not less than one thousand dollars
nor more than ten thousand dollars against such violator. Anyone so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within thirty days, the attorney general may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any such civil action, the court's review of the board's action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

Any person may report to the board relevant facts about the conduct of any osteopathic physician in this state which in the opinion of such person amounts to professional malpractice or professional incompetence. The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of osteopathic physicians or physicians and surgeons of other schools of medicine to suspend, restrict or revoke the privileges or membership of such osteopathic physician.

(c) In every case considered by the board under this article regarding suspension, revocation or issuance of a license whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of cause to suspend, revoke or refuse to issue a license as set forth in subsection (a), section eleven of this article. If such probable cause is found to exist, all proceedings on such charges shall be open to the public who shall be entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken: Provided, That any medical records, which were introduced at such hearing and which pertain to a person who has not expressly waived his right to the confidentiality of such records, shall not be open to the public nor is the public
entitled to such records. If a finding is made that probable
cause does not exist, the public has a right of access to the
complaint or other document setting forth the charges, the
findings of fact and conclusions supporting such finding
that probable cause does not exist, if the subject osteopathic
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.

(a) The board may independently initiate suspension or
revocation proceedings as well as initiate suspension or
revocation proceedings based on information received from
any person.

The board shall initiate investigations as to professional
incompetence or other reasons for which a licensed
chiropractor may be adjudged unqualified if the board
receives notice that five or more judgments or settlements
arising from medical professional liability have been
rendered or made against such chiropractor.

(b) Upon request of the board, any medical peer review
committee in this state shall report any information that
may relate to the practice or performance of any
chiropractor known to that medical peer review committee.
Copies of such requests for information from a medical peer
review committee may be provided to the subject
chiropractor if, in the discretion of the board, the provision
of such copies will not jeopardize the board's investigation.
In the event that copies are so provided, the subject
chiropractor is allowed fifteen days to comment on the
requested information and such comments must be
considered by the board.

After the completion of a hospital's formal disciplinary
procedure and after any resulting legal action, the chief
executive officer of such hospital shall report in writing to
the board within sixty days the name of any member of the
medical staff or any other chiropractor practicing in the
hospital whose hospital privileges have been revoked,
restricted, reduced or terminated for any cause, including
resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any chiropractor by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

Any professional society in this state comprised primarily of chiropractors which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall report in writing to the board within sixty days of a final decision the name of such member, together with all pertinent information relating to such action.

Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to a chiropractor in this state shall submit to the board the following information within thirty days from any judgment, dismissal or settlement of a civil action or of any claim involving the insured: The date of any judgment, dismissal or settlement; whether any appeal has been taken on the judgment, and, if so, by which party; the amount of any settlement or judgment against the insured; and such other information as the board may require.

Within thirty days after a person known to be a chiropractor licensed or otherwise lawfully practicing chiropractic in this state or applying to be so licensed is convicted of a felony under the laws of this state, or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of such chiropractor or applicant, the nature of the offense committed and the final judgment and sentence of the court.

Upon a determination of the board that there is probable
cause to believe that any person, partnership, corporation, association, insurance company, professional society or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. After reviewing the record of such hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than one thousand dollars nor more than ten thousand dollars against such violator. Anyone so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within thirty days, the attorney general may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any such civil action, the court's review of the board's action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

Any person may report to the board relevant facts about the conduct of any chiropractor in this state which in the opinion of such person amounts to professional malpractice or professional incompetence. The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board. The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of chiropractors to suspend, restrict or revoke the privileges or membership of such chiropractor.

(c) In every case considered by the board under this article regarding suspension, revocation or issuance of a license whether initiated by the board or upon complaint or information from any person or organization, the board
shall make a preliminary determination as to whether probable cause exists to substantiate charges of grounds to suspend, revoke or refuse to issue a license as set forth in section eight of this article. If such probable cause is found to exist, all proceedings on such charges shall be open to the public who shall be entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken: Provided, That any medical records, which were introduced at such hearing and which pertain to a person who has not expressly waived his right to the confidentiality of such records, shall not be open to the public nor is the public entitled to such records. If a finding is made that probable cause does not exist, the public has a right of access to the complaint or other document setting forth the charges, the findings of fact and conclusions supporting such finding that probable cause does not exist, if the subject 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 surety insurance, on risks or operations in this state.
2 (b) This article shall not apply:
3 (1) To reinsurance, other than joint reinsurance to the extent stated in section eleven of this article;
4 (2) To life or accident and sickness insurance;
5 (3) To insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;
6 (4) To insurance against loss of or damage to aircraft, including their accessories and equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of aircraft;
7 (5) To title insurance;
8 (6) To malpractice insurance insofar as the provisions of this article directly conflict and thereby are supplanted by article twenty-a of this chapter.
(c) If any kind of insurance, subdivision or combination thereof, or type of coverage, is subject to both the provisions of this article expressly applicable to casualty and surety insurance and to those expressly applicable to fire and marine insurance, the commissioner may apply to filings made for such kind of insurance the provisions of this 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.

This article applies to malpractice insurance as defined in subdivision (9), subsection (e), section ten, article one of this chapter. Nothing in this article shall be construed to supplant any provision of article twenty of this chapter which does not directly conflict with the provisions herein.

§33-20B-2. Rate making.

Any and all modifications of rates made on or after the effective date of this article shall be made in accordance with the following provisions:

(a) Due consideration shall be given to the past loss experience within and outside this state. No consideration shall be given to the prospective or projected loss experience within or outside this state except as prescribed by the regulations of the commissioner promulgated pursuant to subsection (a), section six of this article.

(b) Due consideration shall be given to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers and actual past expenses and demonstrable prospective or projected expenses applicable to this state.

(c) Rates shall not be excessive, inadequate or unfairly discriminatory.
(d) Except to the extent necessary to meet the provisions of subdivision (c) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(e) Rates made in accordance with this section may be used subject to the provisions of this article.

§33-20B-3. Rate filings.

(a) Every filing for malpractice insurance made pursuant to subsection (a), section four, article twenty of this chapter shall state the proposed effective date thereof, the character and extent of the coverage contemplated, and information in support of such filing. The information furnished in support of a filing shall include (i) the experience or judgment of the insurer or rating organization making the filing; (ii) its interpretation of any statistical data the filing relies upon; (iii) the experience of other insurers or rating organizations; and (iv) any other relevant factors required by the commissioner. When a filing is not accompanied by the information required by this section upon which the insurer supports such filing, the commissioner shall require such insurer to furnish such information and, in such event, the waiting period prescribed by subsection (b) of this section shall commence as of the date such information is furnished.

A filing and any supporting information shall be open to public inspection as soon as the filing is received by the commissioner. Any interested party may file a brief with the commissioner supporting his position concerning the filing. Any person or organization may file with the commissioner a signed statement declaring and supporting his or its position concerning the filing. Upon receipt of any such statement prior to the effective date of the filing, the commissioner shall mail or deliver a copy of such statement to the filer, which may file such reply as it may desire to make. This section shall not be applicable to any memorandum or statement of any kind by any employee of the commissioner.

(b) Every such filing shall be on file for a waiting period of sixty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty days if he gives written notice within
such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period or any extension thereof.

(c) No insurer shall make or issue a contract or policy of malpractice insurance except in accordance with the filings which are in effect for said insurer as provided in this article.

§33-20B-4. Disapproval of filings.

(a) If within the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the requirements of this article, he shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing specifying therein in what respects he finds such filing fails to meet the requirements of this article and stating that such filing shall not be effective. Within thirty days from the issuance of written notice of disapproval, any insurer or rating organization aggrieved by such disapproval of any filing may request a hearing thereon pursuant to section thirteen, article two of this chapter.

(b) If at any time subsequent to the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the requirements of this article, he shall send to the insurer or rating organization which made such filing a written order specifying in what respect he finds that such filing fails to meet the requirements of this article and a date, not less than thirty days from the issuance of such order, when such filing shall be deemed no longer effective. Within thirty days from the issuance of such order, any insurer or rating organization aggrieved by such order may request a hearing thereon pursuant to section thirteen, article two of this chapter. Any such order shall not affect
any contract or policy made or issued prior to the expiration
date set forth in such order.

(c) Any person or organization aggrieved by any filing
which is in effect or the application thereof may request a
hearing thereon pursuant to section thirteen, article two of
this chapter. The insurer or rating organization which made
such filing shall be notified in writing upon receipt of any
such request for hearing and thereby made a party to such
hearing. Upon such hearing, if the commissioner finds that
such filing fails to meet the requirements of this article, he
shall issue an order specifying in what respects he so finds
and a date, not less than thirty days from the issuance of
such order, when such filings shall be deemed no longer
effective.

(d) The commissioner shall hold a public hearing upon
every filing which requests an increase in general rates of
ten percent or more and upon every filing which, in the
opinion of the commissioner, is of such import that it will
affect the public. The insurer or rating organization which
made such filing shall be notified in writing not less than
fifteen days prior to the hearing date. Notice of the time,
place and filing to be considered shall be published as a
Class II legal advertisement in every county in the state in
accordance with article three, chapter fifty-nine of this
code.

§33-20B-5. Rating organizations.

1 (a) A corporation, an unincorporated association, a
partnership or an individual, whether located within or
outside this state, may make application to the
commissioner for license as a rating organization for such
kinds of malpractice insurance as are specified in its
application and shall file therewith: (1) A copy of its
constitution, its articles of agreement or association or its
certificates of incorporation, and of its bylaws, rules and
regulations governing the conduct of its business; (2) a list
of its members and subscribers; (3) the name and address of
a resident of this state as attorney-in-fact upon whom
notices or orders of the commissioner or process affecting
such rating organization may be served; and (4) a statement
of its qualifications as a rating organization. If the
commissioner finds that the applicant is competent,
trustworthy and otherwise qualified to act as a rating 
or organization and that its constitution, articles of agreement 
or association or certificate of incorporation, and its 
bylaws, rules and regulations governing the conduct of its 
business conform to the requirements of law, he shall issue a 
license specifying the kinds of insurance or subdivisions 
thereof for which the applicant is authorized to act as a 
rating organization. Every such application shall be 
granted or denied in whole or in part by the commissioner 
within sixty days of the date of its filing with him. Licenses 
issued pursuant to this section shall remain in effect for 
three years unless sooner suspended or revoked by the 
commissioner. The fee for said license shall be twenty-five 
dollars, which fee shall be in addition to all other fees, 
licenses or taxes to which a rating organization might 
otherwise be subject, and all fees so collected shall be paid 
to the state treasury pursuant to subsection (b), section 
thirteen, article three of this chapter. In the event the rating 
organization ceases to meet the requirements of this article, 
the license issued pursuant to this section may be suspended 
or revoked by the commissioner upon notice and hearing 
pursuant to article five, chapter twenty-nine-a of this code. 
Every rating organization shall notify the commissioner 
promptly of every change in: (1) Its constitution, its articles 
of agreement or association or its certificate of 
incorporation, and its bylaws, rules and regulations 
governing the conduct of its business; (2) its list of members 
and subscribers; and (3) the name and address of the 
resident of this state designated as attorney-in-fact by it 
upon whom notices or orders of the commissioner or process 
affection such rating organization may be served. 
(b) The commissioner shall promulgate legislative rules 
pursuant to article three, chapter twenty-nine-a of this 
code prescribing procedures for rating organizations to 
permit any insurer not a member to become a subscriber to 
its rating services for any kind of insurance for which it is 
authorized to act as a rating organization pursuant to this 
section. Each rating organization shall furnish its rating 
services without discrimination to its members and 
subscribers. The reasonableness of any legislative rule in its 
application to subscribers shall be reviewed by the 
commissioner upon request of any such subscriber. If the
commissioner finds, upon notice and hearing provided pursuant to article five, chapter twenty-nine-a of this code, that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule is not to be applicable to subscribers and promulgate a revised rule. The denial of any insurer's application for subscribership in contravention of a legislative rule or the failure to approve or deny such an application within thirty days after submission to the rating organization shall be reviewed by the commissioner upon request of the aggrieved insurer. If the commissioner finds, upon notice and hearing provided pursuant to article five, chapter twenty-nine-a of this code, that the insurer has been wrongfully denied subscribership, he shall order the rating organization to admit the insurer as a subscriber.

(c) No rating organization shall adopt any policy or rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(d) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this article or article twenty of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this article and article twenty which are applicable to filings generally.

The commissioner may review such cooperative activities and practices. If the commissioner finds, upon notice and hearing provided pursuant to article five, chapter twenty-nine-a of this code, that any such activity or practice is unfair, unreasonable or otherwise inconsistent with the provisions of this article, he shall issue a written order specifying in what respects such activity or practice is unfair, unreasonable or otherwise inconsistent with the provisions of this article, and requiring that such activity or practice be discontinued immediately.

(e) Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.
§33-20B-6. Rate review and reporting.

(a) The commissioner shall review annually the rules, rates and rating plans filed and in effect for each insurer providing five percent or more of the malpractice insurance coverage in this state in the preceding calendar year to determine whether such filings continue to meet the requirements of this article and whether such filings are unfair or inappropriate given the loss experience in this state in the preceding year.

Within two hundred forty days of the effective date of this article, the commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code, establishing procedures for the fair and appropriate evaluation and determination of the past loss experience and prospective or projected loss experience of insurers within and outside this state, actual past expenses incurred in this state and demonstrable prospective or projected expenses applicable to this state:

(b) Within one hundred eighty days of the effective date of this article, the commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code, establishing procedures whereby each insurer providing five percent or more of the malpractice insurance coverage in this state shall submit to the commissioner the following information:

(1) The number of claims filed per category;
(2) The number of civil actions filed;
(3) The number of civil actions compromised or settled and the amount of each such compromise or settlement;
(4) The number of verdicts in civil actions and the amount of each such verdict;
(5) The number of civil actions appealed and the disposition of each such appeal;
(6) The number of civil actions dismissed and the cause of each such dismissal;
(7) The total dollar amount paid in claims;
(8) The total dollar amount paid to plaintiffs in civil actions;
(9) The number of claims closed without payment and the amount held in reserve for each such claim;
(10) The total dollar amount expended for loss adjustment expenses, commissions and brokerage expenses;
(11) The total dollar amount expended in defense and litigation of claims;
(12) The total dollar amount held in reserve for anticipated claims;
(13) Net profit or loss;
(14) Profits from investment income on net realized capital gains and loss reserves and unearned premiums; and
(15) The number of malpractice insurance policies canceled for reasons other than nonpayment of premiums.

Any insurer who fails to submit any and all such information to the commissioner as required by this subsection in accordance with the regulations promulgated hereunder shall be fined ten thousand dollars for each of the first five such failures per year and shall be fined one hundred thousand dollars for the sixth and each subsequent failure per year.

(c) Beginning in the year one thousand nine hundred eighty-six, the commissioner shall report annually during the month of November to the joint standing committee on the judiciary the following information pertaining to each insurer providing five percent or more of the malpractice insurance coverage in this state:

(1) The loss experience within the state during the preceding calendar year;
(2) The rules, rates and rating plans in effect on the date of such report;
(3) The investment portfolio, including reserves, and the annual rate of return thereon; and
(4) The information submitted to the commissioner pursuant to the regulations promulgated by authority of subsection (b) of this section.

§33-20B-7. Studies by the commissioner.

The commissioner is hereby directed to study the feasibility and desirability of creating joint underwriting associations or alternative pooling agreements to facilitate the issuance and underwriting of malpractice insurance policies in this state. The commissioner is further directed to identify and study the policies and practices of all insurers in setting dollar amounts to be held in reserve for anticipated claims and claims filed against malpractice insurance policies in this state.
Beginning in the year one thousand nine hundred eighty-six, the commissioner shall report periodically the results of the studies required by this section to the joint standing committee on the judiciary. Beginning in the year one thousand nine hundred eighty-seven, the commissioner shall file an annual report of the results of such studies with 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.

This article applies to malpractice insurance as defined in subdivision (9), subsection (e), section ten, article one of this chapter. This article applies to malpractice insurance policies which have been in effect for at least sixty days or have been renewed at least once.

§33-20C-2. Cancellation and nonrenewal prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing malpractice insurance in this state shall cancel or fail to renew such policy, except for one or more of the following reasons:

(a) The named insured fails to discharge any of his obligations to pay premiums for such policy or any installment thereof within a reasonable time of the due date;

(b) The policy was obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The insured's experiences render him an increased risk, which experiences may include revocation or suspension of a professional license or two or more claims paid or judgments rendered against the insured for professional liability within a three-year period.

(e) The unavailability of reinsurance, upon sufficient proof thereof being supplied to the commissioner.
Any purported cancellation or failure to renew a policy providing malpractice insurance attempted in contravention of this section shall be void.

§33-20C-3. Insurer to specify reasons for cancellation and non-renewal.

In every instance in which a policy or contract of malpractice insurance is cancelled or is not renewed by the insurer, the insurer or his duly authorized agent shall cite within the written notice of the action the allowable reason in section two of this article for which such action was taken and shall state with specificity the circumstances giving rise to the allowable reason so cited. The notice of the action shall further state that the insured has a right to request a hearing pursuant to section five of this article within thirty days.

§33-20C-4. Notice period for cancellation or nonrenewal.

(a) No insurer shall fail to renew a policy or contract providing malpractice insurance unless written notice of such nonrenewal is forwarded to the insured by certified mail, return receipt requested, not less than ninety days prior to the expiration date of such policy.

(b) No insurer shall cancel a policy or contract providing malpractice insurance during the term of such policy, unless written notice of such cancellation is forwarded to the insured by certified mail, return receipt requested, not more than thirty days after the reason for such cancellation, as provided in section two of this article, arose or occurred or the insurer learned that it arose or occurred and not less than thirty days prior to the effective cancellation date.

(c) Notwithstanding any other provision of this article, the insurer shall renew any malpractice insurance policy that has not been renewed due to the insured's failure to pay the renewal premium when due if none of the other grounds for failure to renew as set forth in section two of this article exist and the insured makes application for renewal within ninety days of the original expiration date of the policy. If a policy is renewed as provided in this subsection, the coverage afforded need not be retroactive to the original 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
compensation to those persons who suffer from injury or death as a result of professional negligence;
That liability insurance is a key part of our system of litigation, affording compensation to the injured while fulfilling the need and fairness of spreading the cost of the risks of injury;
That a further important component of these protections is the capacity and willingness of health care providers to monitor and effectively control their professional competency, so as to protect the public and ensure to the extent possible the highest quality of care;
That it is the duty and responsibility of the Legislature to balance the rights of our individual citizens to adequate and reasonable compensation with the broad public interest in the provision of services by qualified health care providers who can themselves obtain the protection of reasonably priced and extensive liability coverage;
That in recent years, the cost of insurance coverage has risen dramatically while the nature and extent of coverage has diminished, leaving the health care providers and the injured without the full benefit of professional liability insurance coverage;
That many of the factors and reasons contributing to the increased cost and diminished availability of professional liability insurance arise from the historic inability of this state to effectively and fairly regulate the insurance industry so as to guarantee our citizens that rates are appropriate, that purchasers of insurance coverage are not treated arbitrarily, and that rates reflect the competency and experience of the insured health care providers.
Therefore, the purpose of this enactment is to provide for a comprehensive resolution of the matters and factors which the Legislature finds must be addressed to accomplish the goals set forth above. In so doing, the Legislature has determined that reforms in the common law and statutory rights of our citizens to compensation for injury and death, in the regulation of rate making and other practices by the liability insurance industry, and in the authority of medical licensing boards to effectively regulate and discipline the health care providers under such board must be enacted together as necessary and mutual ingredients of the appropriate legislative response.
§55-7B-2. Definitions.

(a) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to or on behalf of a patient during the patient's medical care, treatment or confinement.

(b) "Health care facility" means any clinic, hospital, nursing home, or extended care facility in and licensed by the state of West Virginia and any state operated institution or clinic providing health care.

(c) "Health care provider" means a person, partnership, corporation, facility or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic physician, hospital, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, or psychologist, or an officer, employee or agent thereof acting in the course and scope of such officer's, employee's or agent's employment.

(d) "Medical professional liability" means any liability for damages resulting from the death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility to a patient.

(e) "Patient" means a natural person who receives or should have received health care from a licensed health care provider under a contract, expressed or implied.

(f) "Representative" means the spouse, parent, guardian, trustee, attorney or other legal agent of another.

(g) "Noneconomic loss" means losses including, but not limited to, pain, suffering, mental anguish and grief.

§55-7B-3. Elements of proof.

The following are necessary elements of proof that an injury or death resulted from the failure of a health care provider to follow the accepted standard of care:

(a) The health care provider failed to exercise that degree of care, skill and learning required or expected of a reasonable, prudent health care provider in the profession or class to which the health care provider belongs acting in the same or similar circumstances; and
(b) Such failure was a proximate cause of the injury or death.

§55-7B-4. Health care injuries; limitations of actions; exceptions.

(a) A cause of action for injury to a person alleging medical professional liability against a health care provider arises as of the date of injury, except as provided in subsection (b) of this section, and must be commenced within two years of the date of such injury, or within two years of the date when such person discovers, or with the exercise of reasonable diligence, should have discovered such injury, whichever last occurs: Provided, That in no event shall any such action be commenced more than ten years after the date of injury.

(b) A cause of action for injury to a minor, brought by or on behalf of a minor who was under the age of ten years at the time of such injury, shall be commenced within two years of the date of such injury, or prior to the minor's twelfth birthday, whichever provides the longer period.

(c) The periods of limitation set forth in this section shall be tolled for any period during which the health care provider or its representative has committed fraud or collusion by concealing or misrepresenting material facts about the injury.

§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated.

In any medical professional liability action against a health care provider, no specific dollar amount or figure may be included in the complaint, but the complaint may include a statement reciting that the minimum jurisdictional amount established for filing the action is satisfied. However, any party defendant may at any time request a written statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff who shall serve a responsive statement as to the damages sought within thirty days thereafter. If no response is served within the thirty days, the party defendant requesting the statement may petition the court in which the action is pending to order the plaintiff to serve a responsive statement.
§55-7B-6. Pretrial procedures.

(a) In each medical professional liability action against a health care provider, not less than nine nor more than twelve months following the filing of answer by all defendants, a mandatory status conference shall be held at which, in addition to any matters otherwise required, the parties shall:

1. Inform the court as to the status of the action, particularly as to the identification of contested facts and issues and the progress of discovery and the period of time for, and nature of, anticipated discovery; and

2. On behalf of the plaintiff, certify to the court that either an expert witness has or will be retained to testify on behalf of the plaintiff as to the applicable standard of care or that under the alleged facts of the action, no expert witness will be required. If the court determines that expert testimony will be required, the court shall provide a reasonable period of time for obtaining an expert witness and the action shall not be scheduled for trial, unless the defendant agrees otherwise, until such period has concluded. It shall be the duty of the defendant to schedule such conference with the court upon proper notice to the plaintiff.

(b) In the event that the court determines prior to trial that either party is presenting or relying upon a frivolous or dilatory claim or defense, for which there is no reasonable basis in fact or at law, the court may direct in any final judgment the payment to the prevailing party of reasonable litigation expenses, including deposition and subpoena expenses, travel expenses incurred by the party, and such other expenses necessary to the maintenance of the action, excluding attorney's fees and expenses.

§55-7B-7. Testimony of expert witness on standard of care.

The applicable standard of care and a defendant's failure to meet said standard, if at issue, shall be established in medical professional liability cases by the plaintiff by testimony of one or more knowledgeable, competent expert witnesses if required by the court. Such expert testimony may only be admitted in evidence if the foundation, therefor, is first laid establishing that: (a) The opinion is actually held by the expert witness; (b) the opinion can be
testified to with reasonable medical probability; (c) such expert witness possesses professional knowledge and expertise coupled with knowledge of the applicable standard of care to which his or her expert opinion testimony is addressed; (d) such expert maintains a current license to practice medicine in one of the states of the United States; and (e) such expert is engaged or qualified in the same or substantially similar medical field as the defendant health care provider.

§55-7B-8. Limit on liability for noneconomic loss.

In any medical professional liability action brought against a health care provider, the maximum amount recoverable as damages for noneconomic loss shall not exceed one million dollars and the jury shall be so instructed.

§55-7B-9. Effective date; applicability of provisions.

The provisions of this article shall not apply to injuries which occur before the effective date of this article.

§55-7B-10. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are 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 anonometers 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.

There is hereby continued a board of appeals, consisting of three members. Two members of the board shall be appointed by the governor, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one person who by reason of previous training and experience may reasonably be said to represent the
viewpoint of the operators. The third person, who shall
be chairman of the board, and who must not have had
any connection at any time with the coal industry or an
organization representing miners, shall be selected by
the two members appointed by the governor. The term
of office of members of the board shall be five years.

The function and duties of the board shall be to hear
appeals, make determinations on questions of miners’
entitlements due to withdrawal orders and appeals from
discharge or discrimination, and suspension of certifica-
tion certificates.

The chairman of the board shall have the power to
administer oaths and subpoena witnesses and require
production of any books, papers, records or other
documents relevant or material to the appeal inquiry.

The chairman shall subpoena any witness requested
by a party to a hearing to testify or produce books,
records or documents. Any witness responding to a
subpoena so issued shall receive a daily witness fee to
be paid out of the state treasury upon a requisition of
the state auditor equivalent to the rate of pay under the
wage agreement currently in effect plus all reasonable
expenses for meals, lodging and travel at the rate
applicable to state employees. Any full payments as
hereinbefore specified shall be in full and exclusive
payment for meals, lodging, actual travel and similar
expenses and shall be made in lieu of any lost wages
occasioned by such appearance in connection with any
hearing conducted by the board.

Each member of the board shall receive one hundred
dollars per diem while actually engaged in the perfor-
mance of the work of the board. Each member shall be
reimbursed for all reasonable and necessary expenses
actually incurred during the performance of their
duties. Each member shall receive mileage expense
reimbursement at the rate established by rule and
regulation of the commissioner of the department of
finance and administration for in-state travel of public
employees. No reimbursement for expenses shall be
made except upon an itemized account, properly
certified by such members of the board. All reimbursement for expenses shall be paid out of the state treasury upon a requisition upon the state auditor.

Board members, before performing any duty, shall take and subscribe to the oath required by section five, 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 committee; 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) There is hereby established a state coal mine safety and technical review committee. The purposes of this committee are to:

(a) Assist the board of coal mine health and safety in the development of technical data relating to mine safety issues, including related mining technology;

(b) Provide suggestions and technical data to the board and propose rules and regulations with general mining industry application;

(c) Accept and consider petitions submitted by individual mine operators or miners seeking site-specific rule-making pertaining to individual mines and make recommendations to the board concerning such rule-making; and

(d) Provide a forum for the resolution of technical issues encountered by the board.

(2) The committee shall consist of two members who shall be residents of this state, and who shall be appointed as hereinafter specified in this section:

(a) The governor shall appoint one member to represent the viewpoint of the coal operators in this state from a list containing one or more nominees submitted by the major trade association representing coal operators in this state within thirty days of submission of such nominee or nominees.
(b) The governor shall appoint one member to represent the viewpoint of the working miners of this state from a list containing one or more nominees submitted by the highest ranking official within the major employee organization representing coal mines within this state within thirty days of submission of the nominee or the nominees.

(c) The members appointed in accordance with the provisions of subdivisions (a) and (b) of this subsection shall be initially appointed to serve a term of three years.

(d) The members appointed in accordance with the provisions of subdivisions (a) and (b) of this subsection may be, but are not required to be, members of the board of coal mine health and safety, and shall be compensated on a per diem basis in the same amount as provided in section seven of this article, plus all reasonable expenses.

(3) The committee shall meet at least once during each calendar month, or more often as may be necessary.

(4) A quorum of the committee shall require both members, and the committee may only act officially by a quorum.

(5) The committee may review any matter relative to mine safety and mining technology, and may pursue development and resolution of issues related thereto. The committee may make recommendations to the board for the promulgation of rules and regulations with general mining industry application. Upon receipt of a unanimous recommendation for rule-making from the committee and only thereon, the board may adopt or reject such rules or regulations, without modification except as approved by the committee: Provided, That any adopted rule or regulation shall not reduce or compromise the level of safety or protection below the level of safety or protection afforded by applicable statutes and regulations. When so promulgated, such rules or regulations shall be effective, notwithstanding the provisions of applicable statutes or regulations.
Upon application of a coal mine operator, or on its own motion, the committee has the authority to accept requests for site-specific rule-making on a mine-by-mine basis, and make unanimous recommendations to the board for site-specific rules and regulations thereon. The committee has authority to approve a request if it concludes that the request does not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by any applicable statutes or regulations. Upon receipt of a request for site-specific rule-making, the committee may conduct an investigation of the conditions in the specific mine in question, which investigation shall include consultation with the mine operator and authorized representatives of the miners. Such authorized representatives of the miners shall include any person designated by the employees at the mine, persons employed by an employee organization representing one or more miners at the mine, or a person designated as a representative by one or more persons at the mine.

If the committee determines to recommend a request made pursuant to subdivision (a) of this subsection, the committee shall provide the results of its investigation to the board of coal mine health and safety along with recommendations for the development of the site-specific rules and regulations applicable to the individual mine, which recommendations may include a written proposal containing draft rules and regulations.

Within thirty days of receipt of the committee's recommendation, the board shall adopt or reject, without modification, except as approved by the committee, the committee's recommendation to promulgate site-specific regulations applicable to an individual mine, adopting such site-specific regulations only if it determines that the application of the requested rule to such mine will not reduce or compromise the level of safety or protection afforded miners below that level of safety or protection afforded by any applicable statutes or regulations. When so promulgated, such rules or regulations shall be effective notwithstanding the
provisions of applicable statutes or regulations.

(7) The board shall consider all regulations proposed by the coal mine safety and technical review committee and adopt or reject, without modification, except as approved by the committee, such rules and regulations, dispensing with the preliminary procedures set forth in subdivisions (1) through (7), subsection (a), section four-a; and, in addition, with respect to site-specific regulations also dispensing with the procedures set forth in subdivisions (4) through (8), subsection (c), section four of this article.

(8) In performing its functions, the committee shall have access to the services of the coal mine health and safety administrator appointed under section four-b of this article. The commissioner shall make clerical support and assistance available in order that the committee can carry out its duties. Upon the request of both members of the committee, the health and safety administrator shall draft proposed regulations and reports or make investigations.

(9) The powers and duties provided for in this section for the committee are not intended to replace or precondition the authority of the board of coal mine health and safety to act in accordance with sections one through four-b and five through seven of this article.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 2. UNDERGROUND MINES.

§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-2-46. 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.

(a) The operator or mine foreman of every coal mine, whether worked by shaft, slope or drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines the quantity of air passing through the last open crosscut between the intake and return in any pair or set of entries shall be not less than nine thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of three thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than nine thousand cubic feet of air per minute if at least nine thousand cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases. The operator shall provide to the safety committee access to anonometers and smoke tubes while performing their duties. All active underground working places in a mine shall be ventilated by a current of air containing not less than nineteen and five-tenths percent of oxygen, not more than five-tenths percent of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.

(b) Airflow shall be maintained in all intake and return air courses of a mine, and where multiple fans are used, neutral areas created by pressure equalization between main fans shall not be permitted. Production activities in working faces shall cease while tubing, line brattice, or other ventilation devices are being installed inby the machine operator.

(c) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to
the working faces for the miners and to remove
flammable, explosive and noxious gases, dust and
explosive fumes. When damaged by falls or otherwise,
such line brattice or other devices shall be repaired
immediately.

(d) Brattice cloth used underground shall be of flame-
resistant material. The space between the line brattice
or other approved device and the rib shall be large
enough to permit the flow of a sufficient volume and
velocity of air to keep the working face clear of
flammable, explosive and noxious gases, dust and
explosive fumes.

(e) Each working unit newly developed in virgin coal
hereafter, shall be ventilated by a separate split of air:
Provided, That in areas already under development and
in areas where physical conditions prevent compliance
with this provision, the director may grant temporary
relief from compliance until such time as physical
conditions make compliance possible. The quantity of air
reaching the last crosscut shall not be less than nine
thousand cubic feet of air per minute and shall under
any condition have sufficient volume and velocity to
reduce and carry away smoke and flammable or
harmful gases from each working face in the section.

(f) As working places advance, crosscuts for air shall
be made not more than one hundred five feet apart.
Where necessary to render harmless and carry away
noxious or flammable gases, line brattice or other
approved methods of ventilation shall be used so as to
properly ventilate the face. All crosscuts between the
main intake and return airways not required for
passage of air and equipment shall be closed with
stoppings substantially built with incombustible or fire-
resistant material so as to keep working places well
ventilated. In mines where it becomes necessary to
provide larger pillars for adequate roof support,
working places shall not be driven more than two
hundred feet without providing a connection that will
allow the free flow of air currents. In such cases, a
minimum of twelve thousand cubic feet of air a minute
shall be delivered to the last open crosscut and as much
more as is necessary to dilute and render harmless and
carry away flammable and noxious gases.

(g) In special instances for the construction of
sidetracks, haulageways, airways, or openings in shaft
bottom or slope bottom layouts where the size and
strength of pillars is important, the director may issue
a permit approving greater distances. The permit shall
specify the conditions under which such places may be
driven.

(h) In all mines a system of bleeder openings on air
courses designed to provide positive movement of air
through and/or around abandoned or caved areas,
sufficient to prevent dangerous accumulation of gas in
such areas and to minimize the effect of variations in
atmospheric pressure shall be made a part of pillar
recovery plans projected after the first day of July, one
thousand nine hundred seventy-one.

(i) If a bleeder return is closed as a result of roof falls
or water during pillar recovery operations, pillar
operations may continue without reopening the bleeder
return if at least twenty thousand cubic feet of air per
minute is delivered to the intake of the pillar line.

(j) No operator or mine foreman shall permit any
person to work where he is unable to maintain the
quantity and quality of the air current as heretofore
required: Provided, That such provisions shall not
prohibit the employment of men to make the place of
employment safe.

(k) The ventilation of any mine shall be so arranged
by means of air locks, overcasts, or undercasts, that the
use of doors on passageways where men or equipment
travel may be kept to a minimum. Where doors are used
in a mine they shall be erected in pairs so as to provide
a ventilated air lock unless the doors are operated
mechanically.

(l) A crosscut shall be provided at or near the face of
each entry or room before such places are abandoned.

(m) Overcasts or undercasts shall be constructed of
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.

(a) The roadbed, rails, joints, switches, frogs and other elements of all haulage roads shall be constructed, installed and maintained in a manner consistent with the speed and type of haulage operations being conducted to ensure safe operation. Where transportation of personnel is exclusively by rail, track shall be maintained to within five hundred feet of the nearest working face.

(b) Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guardrails; switch throws and stands, where possible, shall be placed on the clearance side.

(c) Haulage roads on entries developed after the effective date of this article shall have a continuous, unobstructed clearance of at least twenty-four inches from the farthest projection of any moving equipment on the clearance side.

(d) On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

(e) On the trolley wire or "tight" side, after the effective date of this article, there shall be at least twelve inches of clearance from the farthest projection of any moving equipment.

(f) Warning lights or reflective signs or tapes shall be installed along haulage roads at locations of abrupt or sudden changes in the overhead clearance.

(g) The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies or other material: Provided, That not more than twenty-four inches need be kept free of such obstructions.

(h) Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors, which in no event shall be less than twenty-four inches.

(i) Shelter holes shall be provided along haulage entries driven after the effective date of this article
where locomotive, rope or animal haulage is used. Such
shelter holes shall be spaced not more than one hundred
feet apart, except when variances are authorized by the
director with unanimous agreement of the mine safety
and technical review committee. Shelter holes shall be
on the side of the entry opposite the trolley wire except
that shelter holes may be on the trolley wire and feeder
wire side if the trolley wire and feeder wire are guarded
in a manner approved by the director.

(j) Shelter holes made after the effective date of this
article, unless the director with unanimous agreement
of the mine safety and technical review committee
grants a waiver, shall be at least five feet in depth, not
more than four feet in width, and as high as the
traveling space. Room necks and crosscuts may be used
as shelter holes even though their width exceeds four
feet.

(k) Shelter holes shall be kept clear of refuse and other
obstructions.

(l) After the effective date of this article, shelter holes
shall be provided at switch throws and manually
operated permanent doors.

(m) No steam locomotive shall be used in mines where
miners are actually employed in the extraction of coal,
but this shall not prevent operation of a steam locomot-
otive through any tunnel haulway or part of a mine that
is not in actual operation and producing coal.

(n) Underground equipment powered by internal
combustion engines using petroleum products, alcohol,
or any other compound shall not be used in a coal mine.

(o) Locomotives, personnel carriers, mine cars, supply
cars, shuttle cars, and all other haulage equipment shall
be maintained in a safe operating condition. Each
locomotive, personnel carrier, barrier tractor and other
related equipment shall be equipped with a suitable
lifting jack and handle. An audible warning device and
headlights shall be provided on each locomotive and
each shuttle car. All other mobile equipment, using the
face areas of the mine, purchased after the effective date
of this article, shall be provided with a conspicuous light
or other approved device so as to reduce the possibility
of collision.

(p) No persons other than those necessary to operate
a trip or car shall ride on any loaded car or on the
outside of any car. Where pusher locomotives are not
used, the locomotive operator shall have an assistant to
assist him in his duties.

(q) The pushing of trips, except for switching purposes,
is prohibited on main haulage roads: Provided, That
nothing herein shall prohibit the use of a pusher
locomotive to assist the locomotive pulling a trip.
Motormen and trip riders shall use care in handling
locomotives and cars. It shall be their duty to see that
there is a conspicuous light on the front and rear of each
trip or train of cars when in motion: Provided, however,
That trip lights need not be used on cars being shifted
to and from loading machines, on cars being handled at
loading heads during gathering operations at working
faces, or on trips being pulled by animals. No person
except the operator or his assistant shall ride on
locomotives or loaded cars. An empty car or cars shall
be used to provide a safe distance between the
locomotive and the material car when rail, pipe or long
timbers are being hauled. A safe clearance shall be
maintained between the end car or trips placed on side
tracks and moving traffic. On haulage roads the
clearance point shall be marked with an approved
device.

(r) No motorman, trip rider or brakeman shall get on
or off cars, trips or locomotives while they are in motion,
except that a trip rider or brakeman may get on or off
the rear end of a slowly moving trip or the stirrup of
a slowly moving locomotive to throw a switch, align a
derail or open or close a door.

(s) Flying or running switches and riding on the front
bumper of a car or locomotive are prohibited. Back
poling shall be prohibited except with precaution to the
nearest turning point (not over eighty feet), or when
going up extremely steep grades and then only at slow
speed. The operator of a shuttle car shall face in the
direction of travel except during the loading operation
when he shall face the loading machine.

(t) (1) A system of signals, methods or devices shall
be used to provide protection for trips, locomotives and
other equipment coming out onto tracks used by other
equipment.

(2) In any coal mine where more than three hundred
fifty tons of coal are produced on any shift in each
twenty-four hour period, a dispatcher shall be on duty
when there are movements of track equipment under-
ground, including time when there is no production of
coal. Such traffic shall move only at the direction of the
dispatcher.

(3) The dispatcher's only duty shall be to direct traffic:
Provided, That the dispatcher's duties may also include
those of the responsible person required by section forty-
two of this article: Provided, however, That the dis-
patcher may perform other duties which do not interfere
with his dispatching responsibilities and do not require
him to leave the dispatcher's station except as approved
by the mine safety and technical review committee.

(4) Any dispatcher's station provided after the
effective date of this article shall be on the surface.

(5) All self-propelled track equipment shall be
equipped with two-way communications.

(u) Motormen shall inspect locomotives, and report
any mechanical defects found to the proper supervisor
before a locomotive is put in operation.

(v) A locomotive following another trip shall maintain
a distance of at least three hundred feet from the rear
end of the trip ahead, unless such locomotive is coupled
to the trip ahead.

(w) Positive stopblocks or derails shall be installed on
all tracks near the top and at landings of shafts, slopes,
and surface inclines. Positive-acting stopblocks or
derails shall be used where necessary to protect persons
from danger of runaway haulage equipment.
(x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of the operator.

(y) Mining equipment shall not be parked within fifteen feet of a check curtain or fly curtain.

(z) All self-propelled track haulage equipment shall be equipped with an emergency stop switch, self centering valves, or other devices designed to de-energize the traction motor circuit in the event of an emergency: Provided, That such equipment in operation in a mine on or before the first day of January, one thousand nine hundred eighty-seven, shall not be required to be retrofitted. On or before the first day of January, one thousand nine hundred eighty-seven, all track mounted equipment shall be equipped with trolley pole swing limiters or other means approved by the mine safety and technical review committee to restrict movement of the trolley pole when it is disengaged from the trolley wire. Battery powered mobile equipment shall have the operating controls clearly marked to distinguish the forward and reverse positions.

§22A-2-39. Belt conveyors; installation; maintenance; examination of belt conveyors and belt entries.

(a) On or after the first day of July, one thousand nine hundred seventy-one, all conveyor belts acquired for use underground shall be flame-resistant conveyor belts.

(b) A clear travelway at least twenty-four inches wide shall be provided on both sides of all belt conveyors installed after the first day of July, one thousand nine hundred seventy-one. Where roof supports are installed within twenty-four inches of a belt conveyor, a clear travelway at least twenty-four inches wide shall be provided on the side of such support farthest from the conveyor.

(c) On belt conveyors that do not transport men, stop and start controls shall be installed at intervals not to exceed one thousand feet. Such controls shall be properly installed and positioned so as to be readily accessible.
(d) Persons shall not cross moving belt conveyors, except where suitable crossing facilities are provided.

(e) All belt conveyors shall be inspected by a certified belt examiner, mine foreman-fireboss or assistant mine foreman-fireboss for frozen rollers and fire hazards following the last production shift each week, also before holidays, vacation periods, as hereinafter provided, with records kept of daily inspection.

(f) (1) Belt conveyors on which coal is transported on any shift shall be examined during each coal-producing shift. Such examination shall be made of belt conveyors and belt conveyor entries for unsafe conditions including, but not limited to, mine gases, frozen rollers, hazardous roof or rib conditions and fires.

(2) Whenever an on-shift examination of a belt conveyor and belt conveyor entry has not been made during the preceding shift, an examination shall be made of the belt conveyor and belt conveyor entry prior to the conveyor being started; or if any miner is going to enter the belt conveyor entry, then the area where such miner will be working shall be examined. Such examination shall be made by a certified mine foreman-fireboss, assistant mine foreman-fireboss, or a certified belt examiner. Thereafter, on-shift examinations by a certified belt examiner, mine foreman-fireboss or assistant mine foreman-fireboss shall be made as herein required.

(g) In the conduct of the examination, the belt examiner, mine foreman-fireboss or assistant mine foreman-fireboss shall travel the full extent of the belt conveyor or belt conveyor entry assigned and shall place his initials and the date and time of his examination at or near each belt head and along each belt conveyor he examines. Should the belt examiner, mine foreman-fireboss or assistant mine foreman-fireboss find a condition which he considers dangerous to persons entering such area, he shall erect a danger sign to prevent other persons from entering the area and notify his immediate supervisor of the condition. Only state or federal inspectors or authorized representatives of the
miners, and persons authorized by mine management to
correct the condition, may enter such area while the
danger sign is posted. At the conclusion of each shift,
belt examiners, mine foreman-firebosses or assistant
mine foreman-firebosses shall record in a book provided
for that purpose the results of their examination,
including comments concerning the physical condition
of the belt conveyor and the area where the belt
conveyor is located. Such book shall be examined and
countersigned by the mine foreman or his assistant and
by the person conducting such examination on the next
oncoming shift.

(h) The examinations set forth in this section shall be
the only examinations required of belt conveyors and
belt conveyor entries, notwithstanding any provision of
sections fourteen, twenty or any other section of this
chapter relating to the examination of belt conveyors
and belt conveyor entries.

(i) The board of miner training, education and
certification shall establish criteria and standards for
the training, examination and certification of “belt
examiners.” Persons seeking to be certified as a “belt
examiner” must hold a miner’s certificate and have at
least two years practical underground mining expe-
rience. Such training, examination and certification
program shall, as a minimum, require a demonstration
of knowledge of belt conveyors, roof control, ventilation
and gases.

(j) Deluge-type water sprays, water sprinklers, dry
chemical sprinkler system or foam generators (designed
to be automatically activated in the event of a fire or
rise in the temperature at or near the belt drive) shall
be installed at each main and secondary conveyor drive
that are located underground.

(k) All underground belt conveyors shall be equipped
with slippage and sequence switches.

(l) Telephone and other suitable communications shall
be provided at points where supplies are regularly
loaded or unloaded from the belt conveyors.
(m) After supplies have been transported on belt conveyors, such belts shall be examined by a belt examiner, mine foreman-fireboss or assistant mine foreman-fireboss for unsafe conditions prior to the transportation of men.

(n) No person shall be permitted to perform any work within the confines of the cargo space of a crusher or feeder, unless the crusher or feeder has been de-energized and locked out.

§22A-2-42. Telephone service or communication facilities.

Telephone service or equivalent two-way communication facilities shall be provided in all mines at least one of which shall be in service at all times as follows:

(a) A telephone or equivalent two-way communication facility shall be located on the surface within five hundred feet of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where a responsible person who is always on duty when miners are underground can hear the facility and respond immediately in the event of an emergency. "Two-way communication facility" shall mean a system maintained to allow voice contact to come in and out of the working section at all times.

(b) (1) Telephones or equivalent two-way communication facilities provided at each working section shall be located not more than five hundred feet outby the last open crosscut and not more than eight hundred feet from the farthest point of penetration of the working places on such section.

(2) The incoming communication signal shall activate an audible alarm, distinguishable from the surrounding noise level, or a visual alarm that can be seen by a miner regularly employed on the working section.

(3) If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, means shall be provided
to permit continued communication in the event the mine electric power fails or is cut off. Provided, That where trolley phones and telephones are both used, an alternate source of power for the trolley phone system is not required.

(4) Telephones or equivalent two-way communication facilities shall be maintained in good operating condition at all times. In the event of any failure in the system that results in loss of communication, repairs shall be started immediately, and the system restored to operating condition as soon as possible.

(5) Where required by the director, trucks used for haulage of coal, miners, or supplies by an operator shall be equipped with two-way communication instruments.

(c) On or after the first day of January, one thousand nine hundred seventy-eight, unless the director for good cause grants a waiver, all such telephone or equivalent two-way communications shall be connected to regular telephonic and other means of communication available in the community so that in the event of an emergency, emergency medical attendants or other personnel can communicate to and from the mine directly to health care facilities.

(d) Telephone lines and cables shall be carried on insulators installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be insulated adequately. Lightning arrestors shall be provided at the points where telephone circuits enter the mine.


(a) Electric equipment shall not be taken into or operated in any place where methane can be detected with a flame safety lamp or other approved methane detector at one percent or more at any point not less than eight inches from the roof, face, or rib.

(b) In all mines, electric haulage locomotives operated from trolley wire and other electrical equipment or devices which may ignite gas shall not be used in return air, unless permission is granted by the director for a
For the purpose of this provision, air used to ventilate a section of mine shall not be considered return air until such time as the air has ventilated all of the workings in the section.

(c) No person shall be placed in charge of a coal-cutting machine in any mine who is not a qualified person, capable of determining the safety of the roof and sides of the working places and of detecting the presence of explosive gas, unless they are accompanied by a certified or qualified person who has passed such an examination.

(d) In any mine no machine shall be brought in by the last breakthrough next to the working face until the machine man shall have made an inspection for gas in the place where the machine is to work. If explosive gas in excess of one percent is found in the place, the machine shall not be taken in until the danger is removed.

(e) In working places a safety lamp, or other suitable approved apparatus for the detection of explosive gas, shall be provided for use with each mining machine when working, and should any indication of explosive gas in excess of one percent appear on the flame of the safety lamp, or on other apparatus used for the detection of explosive gas, the person in charge shall immediately stop the machine, cut off the current at the nearest switch and report the condition to the mine foreman or supervisor. The machine shall not again be started in such place until the condition found has been corrected and has been pronounced safe by a certified person.

(f) No electric equipment shall be operated in a mine for a longer period than twenty minutes without an examination as above described being made for gas; and if gas is found in excess of one percent, the current shall at once be switched off the machine, and the trailing cable shall forthwith be disconnected from the power supply until the place is pronounced safe.

(g) Machine runners and helpers shall use care while operating mining machines. They shall not permit any person to remain near the machine while it is in
operation. They shall examine the roof of the working
place to see that it is safe before starting to operate the
machine. They shall not move the machine while the
cutter chain is in motion.

§22A-2-46. Welding and cutting.

(a) A record shall be kept of oxygen and gas tanks or
cylinders taken into a mine and the date shall be
recorded when they are removed from the mine. No
more tanks or cylinders than necessary to perform the
work efficiently shall be permitted underground at one
time.

(b) Propane torches may be used in lieu of blow-
torches. Only approved apparatus such as torches,
regulators, pressure reducing valves, hoses, check valves
and gas cylinders shall be used.

(c) Welding and cutting may be done in mines:
Provided, That all equipment and gauges are main-
tained in safe condition and not abused, that suitable
precautions are taken against ignition of methane, coal
dust, or combustible materials, that means are provided
for prompt extinguishment of fires accidentally started,
and that only persons who have demonstrated compet-
ency in welding and cutting are entrusted to do this
work. Adequate eye protection shall be used by all
persons doing welding or cutting, and precautions shall
be taken to prevent other persons from exposure that
might be harmful to their eyes. A suitable wrench
designed for compressed tanks shall be provided to the
person authorized to use the equipment.

(d) Transportation of oxygen and gas tanks or
cylinders shall be permitted on self-propelled machinery
or belt conveyors specially equipped for safe holding for
the containers in transportation. In no instance shall
such transportation be permitted in conjunction with
any man trip.

(e) Empty oxygen and gas tanks or cylinders shall be
marked “empty” and shall be removed from the mine
promptly in safe containers provided for transportation
of the same.
(f) When tanks and cylinders are not in use and when they are being transported, valve protection caps and plugs shall be placed on all tanks or cylinders for which caps and plugs are available. No oxygen tanks, gas tanks or cylinders shall be transported with the hoses and gauges attached thereto.

(g) In all mines a certified person, pursuant to section twelve of this article, shall examine for gas with permissible flame safety lamps or other approved detectors before and during welding or cutting. The safety of the equipment and methods used in such cases shall be subject to approval of the director. If equipment is mobile, it shall be removed out by the last open breakthrough before cutting and welding may be performed on such equipment.

SAFEGUARDS FOR MECHANICAL EQUIPMENT

§22A-2-49. Safeguards for mechanical equipment.

(a) The cutter chains of mining machines shall be locked securely by mechanical means or electrical interlocks while such machines are parked or being trammed. Loading machines shall not be trammed with loading arms in motion, except when loading materials.

(b) Belt, chain or rope drives and the moving parts of machinery which are within seven feet of the floor, ground or platform level, unless isolated, shall be guarded adequately. Repair pits shall be kept covered or guarded at all times when not in use. Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. Guards which have been removed shall be replaced before the machinery is again put into use. Provision shall be made to prevent accumulations of spilled lubricants.

(c) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods, and, unless goggles are used, eye shields.

(d) No person shall stand along the side of the boom,
or pass or stand along the loading head or cutting head, on a continuous miner or loading machine in operation.

(e) Braking devices shall be guarded to prevent accidental release. When required by the director, track-mounted mobile equipment shall be equipped with workable standing devices.

(f) All battery powered equipment shall be equipped with an under-voltage indicator which will indicate when the voltage is less than three fourths of its rated capacity, at which time such equipment shall be withdrawn from use except for the purpose of returning the vehicle to the recharging station.

(g) On or after the first day of January, one thousand nine hundred eighty-eight, all manually operated valves and levers of equipment of the same manufacturer and model shall have the same direction of activation and direction of operations.

MISCELLANEOUS SAFETY PROVISIONS AND REQUIREMENTS

§22A-2-53a. Railroad cars; dumping areas; other surface areas.

(1) Employees handling railroad cars shall have access to and use an approved distinct audible signaling device to give warning when cars are in motion. Safety belts shall be worn and properly attached by all car droppers handling railroad cars. Railroad cars shall be maintained under control at all times. Cars shall be dropped at a safe rate of speed and in such a manner that will ensure the car dropper maintains a safe position while working and traveling around the car. Railroad cars shall not be coupled or uncoupled manually from the inside of curves unless the railroad and cars are so designed to eliminate any hazard from coupling or uncoupling cars from inside of curves.

(2) All dumping ramps shall be of a sufficient width to ensure safe operation of vehicles used thereon.

(3) All access roads leading to and from bath houses, portals, and other areas on which persons are expected
to travel to and from work, shall be of sufficient width
and be maintained in good condition. On haulage roads,
guardrails or berms shall be provided on the outer bank
of all elevated roadways.

(4) Mobile surface loading and haulage equipment
shall be inspected by a competent person before such
equipment is placed into operation. Equipment defects
affecting safety shall be corrected before the equipment
is used.

(5) Safety protection, such as safety belts, lifelines, or
lanyards to prevent a person from falling shall be
provided at all times that miners are working in an area
where the potential fall distance exceeds fifteen feet,
except that safety belts shall not be used where they are
impractical or would pose a greater hazard. Safety nets
shall be provided when work places are more than
twenty-five feet above the ground where the use of
ladders, scaffolds, catch platforms, temporary floors,
safety lines, or safety belts is impractical.

§22A-2-53b. Haulage or surface areas.

(1) Traffic directions which differ from standard
highways practice shall be posted on signs along the
haulage roads at strategic points in letters at least three
inches high.

(2) Well marked signs conspicuously placed, shall be
properly located to alert drivers to existing danger
areas, such as the approach to a dangerous curve or an
extreme grade.

(3) Traffic rules, signals and warning signs shall be
standardized at each mine.

(4) Where side or overhead clearances on haulage
roads or loading or dumping locations are hazardous to
mine workers, such areas shall be conspicuously marked
and warning devices shall be installed when necessary
to ensure the safety of the workers.

(5) Flashers, flares, or other means of signaling shall
be used to warn approaching drivers of a hazard created
by an obstruction in the roadway.
(6) Regulatory signs shall be used to indicate the required method of traffic movement.

(7) Posted warning signs shall be used where necessary to indicate potential hazardous conditions.

(8) Object marking shall be used to mark physical obstructions in or near the haulageway that presents possible hazards.

(9) All signs and markings shall be displayed and utilized so as to be as effective as possible.

(10) Where side or overhead clearance on any haulage road or at any loading or dumping location at a surface mine is hazardous to any person, such hazard shall be corrected immediately, and all necessary precautions taken while such hazard is being corrected.

(11) Haulage roads shall be located an adequate distance from highwalls and spoil banks to minimize the danger of falling material onto personnel and equipment.

(12) When dust created by haulage is thrown into suspension in such quantities that may obscure the vision of the operators of vehicles, an adequate means shall be taken to allay such dust.

(13) Only authorized persons shall be permitted on haulage roads and at loading or dumping locations.

(14) Berms or guards shall be provided where required on the outer bank of elevating roadways.

(15) The width and grade to be utilized in haulage road construction shall be determined for each specific situation based upon terrain configuration, vehicle characteristics and driver visibility for safe haulage.

(16) Haulage roads shall be constructed of sufficient width to permit the driver to maneuver his vehicle to avoid striking unexpected obstacles on the roadway where reclamation regulations permit.

(17) Provisions shall be made to adequately drain and remove excessive water from the haulage roads.
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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.
(2) Machinery guards—Gears, sprockets, chains, drive head, tail and takeup pulleys, flywheels, couplings, shafts, sawblades, fan inlets, and similar exposed moving machine parts with which persons may come in contact shall be guarded adequately. Except when testing is necessary, machinery guards shall be secured in place while being operated. Belt rollers shall not be cleaned while belts are in motion.

(3) Fire protection—Where cutting or welding is performed at any location, a means of prompt extinguishment of any fire accidently started shall be provided. Adequate fire-fighting facilities, required by the department of energy, shall be provided on all floors. At least two exits shall be provided for every floor of tipples and cleaning plants constructed after the effective date of this section. Signs warning against smoking and open flames shall be posted so they can be readily seen in areas or places where fire or explosion hazards exist. Smoking or an open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

(4) Repairs of machinery—Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations. Where repairs are made to tipples, or cleaning plants, proper scaffolding and proper overhead protection shall be provided for workmen when necessary. Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.

(5) Stairs, platforms, etc.—Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are exempted from such requirements. Where required, elevated platforms and stairways shall be provided with toeboards. They shall be kept clear of refuse and ice and maintained in
good condition.

(6) Belts, etc.—Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters. Belt dressing shall not be applied while in motion. Belts, chains and ropes shall not be guided into power-driven moving pulleys, sprockets or drums with the hand except with equipment especially designed for hand feeding.

(7) Conveyors and crossovers—When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting the conveyor. When the entire length of the conveyor is not visible from the starting switch, a positive audible or visible warning system shall be installed and operated to warn persons when the conveyor will be started. Crossovers shall be provided where necessary to cross conveyors. All crossovers shall be of substantial construction, with rails, and maintained in good condition. Moving conveyors shall be crossed only at designated crossover points. A positive audible or visible warning system shall be installed and operated to warn persons that a conveyor or other tipple equipment is to be started. Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation. Guards, nets or other suitable protection shall be provided where tramways pass over roadways, walkways or buildings. Where it is required to cross under a belt, adequate means shall be taken to prohibit a person from making contact with a moving part.

(8) Ladders—All ladders shall be securely fastened. Permanent ladders more than ten feet in height shall be provided with backguards. Ladders shall be of substantial construction and maintained in good condition. Wooden ladders shall not be painted. Fixed ladders shall not incline backward at any point unless equipped with backguards. Fixed ladders shall be anchored securely and installed with at least three inches of toe clearance. Side rails of fixed ladders shall project at least three feet above landings, or substantial handholds shall be provided above the landing. No person shall be
permitted to work off of the top step of any ladder. Metal ladders shall not be used with electrical work, where there is danger of the ladder coming into contact with power lines or an electrical conductor. The maximum length of a step ladder shall be twenty feet and an extension ladder sixty feet.

(9) Hoisting—Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted. Persons shall stay clear of hoisted loads. Tag lines shall be attached to hoisted materials that require steadying or guidance. A hoist shall not lift loads greater than the rated capacity of the hoist being used.

(10) Railroad track construction and maintenance—

(a) All parts of the track haulage road under the ownership or control of the operator shall be strictly constructed and maintained. Rails shall be secured at all points by means of plates or welds. When plates are used, plates conforming with the weight of the rail shall be installed and broken plates shall be replaced immediately. Appropriate bolts shall be inserted and maintained in all bolt holes. The appropriate number of bolts conforming with the appropriate rail plate for the weight of the rail shall be inserted, tightly secured, and maintained.

(b) All points shall be installed and maintained so as to prevent bad connections. Varying weights of rail shall not be joined without proper adapters. Tracks shall be blocked and leveled and so maintained so as to prevent high and low joints.

(c) Tracks shall be gauged so as to conform with the track mounted equipment. Curves shall not be constructed so sharp as to put significant pressure on the tracks of the track mounted equipment.

(d) Severely worn or damaged rails and ties shall be replaced immediately.

(e) When mining operations are performed within any twenty-four hour period, operations shall be inspected at least every twenty-four hours to assure safe operation
and compliance with the law and regulations. The
results of which inspection shall be recorded.

(f) Personnel who are required frequently and regu-
larly to travel on belts or chain conveyors extended to
heights of more than ten feet shall be provided with
adequate space and protection in order that they may
work safely. Permanent ladders extending more than
ten feet shall be provided with backguards. Walkways
around thickeners that are less than four feet above the
walkway shall be adequately guarded. Employees
required to work over thickener shall wear a safety
harness adequately secured, unless walkways or other
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 different meaning, as used in this article:
2 (1) "Board" means the West Virginia shallow gas well review board provided for in section four of this article;
3 (2) "Chairman" means the chairman of the West Virginia shallow gas well review board provided for in section four of this article;
4 (3) "Coal operator" means any person who proposes to or does operate a coal mine;
5 (4) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;
6 (5) "Commission" means the oil and gas conservation commission provided for in section four, article eight of this chapter;
7 (6) "Commissioner" means the oil and gas conservation commissioner provided for in section four, article eight of this chapter;
8 (7) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the gas in and under a tract or tracts, or the equivalent thereof;
9 (8) "Deep well" means any well other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group";
10 (9) "Department" means the state department of energy provided for in chapter twenty-two of this code;
11 (10) "Director" means the director for the division of oil and gas provided for in section eleven, article one, chapter twenty-two of this code;
(11) "Drilling unit" means the acreage on which the board decides one well may be drilled under section ten of this article;

(12) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (15) of this section;

(13) "Gas operator" means any person who owns or has the right to develop, operate and produce gas from a pool and to appropriate the gas produced therefrom either for himself or for himself and others. In the event that there is no gas lease in existence with respect to the tract in question, the person who owns or has the gas rights therein shall be considered a "gas operator" to the extent of seven eighths of the gas in that portion of the pool underlying the tract owned by such person, and a "royalty owner" to the extent of one eighth of such gas;

(14) "Just and equitable share of production" means, as to each person, an amount of gas in the same proportion to the total gas production from a well as that person's acreage bears to the total acreage in the drilling unit;

(15) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(16) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;

(17) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(18) "Plat" means a map, drawing or print showing the location of one or more wells or a drilling unit;

(19) "Pool" means an underground accumulation of gas in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of gas from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A pool is bounded by
geologic barriers in all directions, such as geologic
structural conditions, impermeable strata, and water in the
formation, so that it is effectively separated from any other
pools which may be present in the same district or in the
same geologic structure;
(20) "Royalty owner" means any owner of gas in place,
or gas rights, to the extent that such owner is not a gas
operator as defined in subdivision (13) of this section;
(21) "Shallow well" means any gas well drilled and
completed in a formation above the top of the uppermost
member of the "Onondaga Group": Provided, That in
drilling a shallow well the well operator may penetrate into
the "Onondaga Group" to a reasonable depth, not in excess
of twenty feet, in order to allow for logging and completion
operations, but in no event may the "Onondaga Group"
formation be otherwise produced, perforated or stimulated
in any manner;
(22) "Tracts comprising a drilling unit" means that all
separately owned tracts or portions thereof which are
included within the boundary of a drilling unit;
(23) "Well" means any shaft or hole sunk, drilled, bored
or dug into the earth or into underground strata for the
extraction, injection or placement of any liquid or gas, or
any shaft or hole sunk or used in conjunction with such
extraction, injection or placement. The term "well" does
not include any shaft or hole sunk, drilled, bored or dug into
the earth for the sole purpose of core drilling or pumping or
extracting therefrom potable, fresh or usable water for
household, domestic, industrial, agricultural or public use;
and
(24) "Well operator" means any person who proposes to
or does locate, drill, operate or abandon any well.

§22-7-3. Application of article; exclusions.
(a) Except as provided in subsection (b) of this section,
the provisions of this article shall apply to all lands located
in this state, under which a coal seam as defined in section
two of this article and section one, article one, chapter
twenty-two-b of this code, is located, however owned,
including any lands owned or administered by any
government or any agency or subdivision thereof, over
which the state has jurisdiction under its police power. The
provisions of this article are in addition to and not in derogation of or substitution for the provisions of this chapter or chapter twenty-two-b of this code.

(b) This article shall not apply to or affect:

(1) Deep wells;

(2) Oil wells and enhanced oil recovery wells associated with oil wells;

(3) Any shallow well permitted under article four of this chapter prior to 12:01 a.m., the first day of August, one thousand nine hundred seventy-eight, unless such well is, after completion (whether such completion is prior or subsequent to the ninth day of June, one thousand nine hundred seventy-eight), deepened subsequent to the ninth day of June, one thousand nine hundred seventy-eight, through another coal seam to another formation above the top of the uppermost member of the "Onondaga Group";

(4) Any shallow well as to which no objection is made under section seventeen, article one, chapter twenty-two-b of this code;

(5) Wells as defined in subdivision (4), section one, article four, chapter twenty-two-b of this code; or


(c) The provisions of this article affecting applications for permits to drill shallow gas wells shall only apply to such applications filed after 12:01 a.m. the first day of August, one thousand nine hundred seventy-eight, and the provisions of article four of former chapter twenty-two affecting such applications which were in effect immediately prior to the ninth day of June, one thousand nine hundred seventy-eight, shall apply to all such applications filed prior to 12:01 a.m., the first day of August, one thousand nine hundred seventy-eight, with like 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.

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

(1) "Commission" means the oil and gas conservation commission, and "commissioner" means the oil and gas
conservation commissioner as provided for in section four
of this article;
(2) "Director" means the director for the division of oil
and gas provided for in section eleven, article one, chapter
twenty-two of this code;
(3) "Person" means any natural person, corporation,
partnership, receiver, trustee, executor, administrator,
guardian, fiduciary or other representative of any kind, and
includes any government or any political subdivision or any
agency thereof;
(4) "Operator" means any owner of the right to develop,
operate and produce oil and gas from a pool and to
appropriate the oil and gas produced therefrom, either for
himself or for himself and others; in the event that there is
no oil and gas lease in existence with respect to the tract in
question, the owner of the oil and gas rights therein shall be
considered as "operator" to the extent of seven eighths of
the oil and gas in that portion of the pool underlying the
tract owned by such owner, and as "royalty owner" as to
one-eighth interest in such oil and gas; and in the event the
oil is owned separately from the gas, the owner of the
substance being produced or sought to be produced from
the pool shall be considered as "operator" as to such pool;
(5) "Royalty owner" means any owner of oil and gas in
place, or oil and gas rights, to the extent that such owner is
not an operator as defined in subdivision (4) of this section;
(6) "Independent producer" means a person who is
actively engaged in the production of oil and gas in West
Virginia, but whose gross revenue from such production in
West Virginia does not exceed five hundred thousand
dollars per year;
(7) "Oil" means natural crude oil or petroleum and
other hydrocarbons, regardless of gravity, which are
produced at the well in liquid form by ordinary production
methods and which are not the result of condensation of gas
after it leaves the underground reservoir;
(8) "Gas" means all natural gas and all other fluid
hydrocarbons not defined as oil in subdivision (7) of this
section;
(9) "Pool" means an underground accumulation of
petroleum in a single and separate natural reservoir
(ordinarily a porous sandstone or limestone). It is
characterized by a single natural-pressure system so that
production of petroleum from one part of the pool affects
the reservoir pressure throughout its extent. A pool is
bounded by geologic barriers in all directions, such as
gеologic structural conditions, impermeable strata, and
water in the formations, so that it is effectively separated
from any other pools that may be presented in the same
district or on the same geologic structure;
(10) “Well” means any shaft or hole sunk, drilled, bored
or dug into the earth or underground strata for the
extraction of oil or gas;
(11) “Shallow well” means any well drilled and
completed in a formation above the top of the uppermost
member of the “Onondaga Group”: Provided, That in
drilling a shallow well the operator may penetrate into the
“Onondaga Group” to a reasonable depth, not in excess of
twenty feet, in order to allow for logging and completion
operations, but in no event may the “Onondaga Group”
formation be otherwise produced, perforated or stimulated
in any manner;
(12) “Deep well” means any well, other than a shallow
well, drilled and completed in a formation at or below the
top of the uppermost member of the “Onondaga Group”;
(13) “Drilling unit” means the acreage on which one
well may be drilled;
(14) “Waste” means and includes: (a) Physical waste, as
that term is generally understood in the oil and gas
industry; (b) the locating, drilling, equipping, operating or
producing of any oil or gas well in a manner that causes, or
tends to cause, a reduction in the quantity of oil or gas
ultimately recovered from a pool under prudent and proper
operations, or that causes or tends to cause unnecessary or
excessive surface loss of oil or gas; or (c) the drilling of more
deep wells than are reasonably required to recover
efficiently and economically the maximum amount of oil
and gas from a pool;
(15) “Correlative rights” means the reasonable
opportunity of each person entitled thereto to recover and
receive without waste the oil and gas in and under his tract
or tracts, or the equivalent thereof; and
(16) “Just and equitable share of production” means, as
to each person, an amount of oil or gas or both substantially
equal to the amount of recoverable oil and gas in that part of
a pool underlying his tract or tracts.
(b) Unless the context clearly indicates otherwise, the use
of the word "and" and the word "or" shall be
interchangeable, as, for example, "oil and gas" shall mean
oil or gas or both.

§22-8-3. Application of article; exclusions.
(a) Except as provided in subsection (b) of this section,
the provisions of this article shall apply to all lands located
in this state, however owned, including any lands owned or
administered by any government or any agency or
subdivision thereof, over which the state has jurisdiction
under its police power. The provisions of this article are in
addition to and not in derogation of or substitution for the
provisions of article one, chapter twenty-two-b of this code.
(b) This article shall not apply to or affect:
(1) Shallow wells other than those utilized in secondary
recovery programs as set forth in section eight of this
article;
(2) Any well commenced or completed prior to the ninth
day of March, one thousand nine hundred seventy-two,
unless such well is, after completion (whether such
completion is prior or subsequent to that date), (i) deepened
subsequent to that date to a formation at or below the top of
the uppermost member of the "Onondaga Group" or (ii)
involved in secondary recovery operations for oil under an
order of the commissioner entered pursuant to section eight
of this article;
(3) Gas storage operations or any well employed to
inject gas into or withdraw gas from a gas storage reservoir
or any well employed for storage observation; or
(4) Free gas rights.
(c) The provisions of this article shall not be construed
to grant to the commissioner authority or power to:
(1) Limit production or output, or prorate production of
any oil or gas well, except as provided in subdivision (6),
subsection (a), section seven of this article; or
(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 different meaning, as used in this article:
2. (a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;
3. (b) "Cement" means hydraulic cement properly mixed with water;
4. (c) "Chairman" means the chairman of the West Virginia shallow gas well review board as provided for in section four, article seven, chapter twenty-two of this code;
5. (d) "Chief" means chief of the division of water resources of the department of natural resources;
6. (e) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;
7. (f) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;
8. (g) "Commissioner" means commissioner of the department of energy;
9. (h) "Deep well" means any well other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group";
10. (i) "Division" means, for purposes of this article and articles three and four of this chapter, the division of oil and gas of the department of energy;
11. (j) "Director" means, for the purposes of this article and articles two, three and four of this chapter, the director of the division of oil and gas of the department of energy;
12. (k) "Expanding cement" means any cement approved by the division of oil and gas which expands during the hardening process, including, but not limited to, regular oil field cements with the proper additives;
13. (l) "Facility" means any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in article three or four of this chapter, other than a well or well site;
14. (m) "Gas" means all natural gas and all other fluid
hydrocarbons not defined as oil in subdivision (n) of this section;
(n) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoirs;
(o) "Owners" when used with reference to any well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls or possesses such well as principal, or as lessee or contractor, employee or agent of such principal;
(p) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;
(q) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;
(r) "Plat" means a map, drawing or print showing the location of a well or wells as herein defined;
(s) "Review board" means the West Virginia shallow gas well review board as provided for in section four, article seven, chapter twenty-two of this code;
(t) "Safe mining through of a well" means the mining of coal in a workable coal bed up to a well which penetrates such workable coal bed and through such well so that the casing or plug in the well bore where the well penetrates the workable coal bed is severed;
(u) "Shallow well" means any gas well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group": Provided, That in drilling a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the "Onondaga Group" formation be otherwise produced, perforated or stimulated in any manner;
(v) "Stimulate" means any action taken by a well operator to increase the inherent productivity of an oil or
gas well, including, but not limited to, fracturing, shooting
or acidizing, but excluding cleaning out, bailing or
workover operations;
(w) "Waste" means (i) physical waste, as the term is
generally understood in the oil and gas industry; (ii) the
locating, drilling, equipping, operating or producing of any
oil or gas well in a manner that causes, or tends to cause a
substantial reduction in the quantity of oil or gas ultimately
recoverable from a pool under prudent and proper
operations, or that causes or tends to cause a substantial or
unnecessary or excessive surface loss of oil or gas; or (iii) the
drilling of more deep wells than are reasonably required to
recover efficiently and economically the maximum amount
of oil and gas from a pool; (iv) substantially inefficient,
excessive or improper use, or the substantially unnecessary
dissipation of, reservoir energy, it being understood that
nothing in this chapter shall be construed to authorize any
agency of the state to impose mandatory spacing of shallow
wells except for provisions of section eight, article eight,
chapter twenty-two of this code and the provisions of
article seven, chapter twenty-two of this code; (v)
inefficient storing of oil or gas: Provided, That storage in
accordance with a certificate of public convenience issued
by the federal energy regulatory commission shall be
conclusively presumed to be efficient and (vi) other
underground or surface waste in the production or storage
of oil, gas or condensate, however caused;
(x) "Well" means any shaft or hole sunk, drilled, bored
or dug into the earth or into underground strata for the
extraction or injection or placement of any liquid or gas, or
any shaft or hole sunk or used in conjunction with such
extraction or injection or placement. The term "well" does
not include any shaft or hole sunk, drilled, bored or dug into
the earth for the sole purpose of core drilling or pumping or
extracting therefrom potable, fresh or usable water for
household, domestic, industrial, agricultural or public use;
(y) "Well work" means the drilling, redrilling,
deepeening, stimulating, pressuring by injection of any fluid,
converting from one type of well to another, combining or
physically changing to allow the migration of fluid from one
formation to another or plugging or replugging of any well;
z) "Well operator" or "operator" means any person or
persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined;

(aa) "Pollutant" shall have the same meaning as provided in subsection (x), section two, article five-a, chapter twenty of this code; and

(bb) "Waters of this state" shall have the same meaning as the term "waters" as provided in subsection (e), section 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-4. When court may appoint special commissioner; persons autho-
ized 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 circuit courts of the state, as provided by this article, to facilitate development of coal, oil, gas, and other minerals, as part of the public policy of the state, by removing certain barriers to such development caused by interests in minerals owned by unknown or missing owners or by abandoning owners.


1 As used in this article, the following definitions shall apply:

3 (1) "Abandoning owner" means any person, vested with title to any interest in minerals, who is proved to have abandoned the interest, that is, to have relinquished any right to possess or enjoy the interest with the expressed intention of terminating ownership of the interest, but without vesting the ownership in any other person.

10 (2) "Development of the minerals" or "mineral development" means (a) mining coal by any method, or (b) drilling for and producing oil or gas by conventional techniques, or by enhanced recovery by injection of fluids of any kind into the producing formation, or (c)
utilization of a gas-bearing formation as an underground gas storage reservoir within the meaning of article seven, chapter twenty-two of this code, or (d) production of other minerals by any method.

(3) "Interest in minerals" means any interest, real or personal, in coal, oil, gas or any other mineral, for which interest the property taxes are not delinquent as of the date of the filing of a petition under this article.

(4) "Surface owner" means any person vested with any interest in fee in the surface estate overlying the particular minerals sought to be developed under this article. A surface owner's rights under this article shall be subject to any deed of trust or other security instrument, lien, surface lease, easement or other non-possessory interest in the surface owned by any other person; but such persons other than the surface owner shall have no right to notice and no standing to appear and be heard hereunder.

(5) "Unknown or missing owner" means any person, vested with title to any interest in minerals, whose present identity or location cannot be determined from the records of the clerk of the county commission, the sheriff, the assessor, and the clerk of the circuit court in the county in which the interest is located or by diligent inquiry in the vicinity of the owner's last known place of residence, and shall include such owner's heirs, successors and assigns not known to be alive.


The circuit court of the county wherein the minerals sought to be leased, or the major portion thereof, are situated shall have jurisdiction of the proceedings authorized by this article.

§55-12A-4. When court may appoint special commissioner; persons authorized to institute proceedings.

(a) If the title to any mineral interest is vested in an unknown or missing owner or an abandoning owner and it is proved that the development of the minerals would be advantageous to a prudent owner, and if it appears
that the development of the minerals furthers the public policy stated in section one of this article, the circuit court of the county having jurisdiction under section three of this article shall have the power to appoint a special commissioner and authorize the special commissioner to sell, execute and deliver a valid lease of the mineral interest on terms and conditions customary in the area for the mineral interest to be leased. The lease shall continue in full force and effect so long as there are operations under its terms unless the lease has previously expired by its own terms.

(b) A petition to the circuit court for the appointment of a special commissioner may be instituted by any person who is:

(1) Vested with an interest in fee in the surface estate overlying the particular minerals sought to be developed; or

(2) Vested with an interest in fee in the particular minerals sought to be developed; or

(3) The lessee or the assignee or successor to the lessee, under a valid and subsisting mineral lease, the lessor of which is a person entitled to file a petition by reason of subdivision (2) of this subsection.

§55-12A-5. Persons to be joined as defendants; contents of verified petition; notice; guardian ad litem.

(a) The person filing a petition under this article shall join as defendants to the action all unknown or missing owners or abandoning owners having record title to the particular minerals sought to be developed, and the unknown heirs, successors and assigns of all such owners not known to be alive. All persons not in being who might have some contingent or future interest therein, and all persons whether in being or not in being, having any interest, present, future or contingent, in the mineral interests sought to be leased, shall be fully bound by the proceedings hereunder.

(b) The petition shall be verified. It shall contain allegations of the facts showing (1) the entitlement of the petitioner to file the petition, (2) an identification of the
defendants and the mineral interest of each as far as practical under the circumstances, (3) a description of the tract of land which is the subject of the petition, (4) the interest in the particular minerals sought to be developed, (5) the nature of the proposed development of the minerals, (6) the efforts to locate unknown or missing owners, if any, (7) the relinquishment by abandoning owners, if any, of any right to possess or enjoy their interest with the expressed intention of terminating ownership of the interest, but without vesting the ownership in any other person, (8) such other information known to the petitioner which might be helpful in identifying or locating the present owners thereof, and, as exhibits to the petition, (9) a certified copy of the most recent recorded instrument embracing the interest to be leased, (10) such additional instruments as are necessary to show the vesting of title to the minerals in the last record owner thereof, and (11) a certified copy of any competing lease or easement of record, that is to say, a lease or easement from landowners who are not defendants, embracing all or part of the tract of land which is the subject of the petition, for any mineral development by the lessee or easement owner of record of the minerals sought by the petition; and the petition may contain allegations of the facts showing that (12) mineral development would be advantageous to the defendants and would further the public policy stated in section one of this article; and the prayer shall be for the court to order the sale of a lease covering the subject mineral interest under section six of this article, and thereafter, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest for seven years after the date of the lease, for the court to order a conveyance of the defendant's mineral interest under section seven of this article, subject to the lease, to the owner of the surface overlying the mineral interest.

(c) If personal service of process is possible, it shall be made as provided by the West Virginia rules of civil procedure. In addition, immediately upon the filing of the petition, the petitioner shall (1) publish a Class III
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legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and (2) no
later than the first day of publication, file a lis pendens
notice in the county clerk’s office of the county wherein
the mineral estate or the larger portion thereof lies.
Both the advertisement and the lis pendens notice shall
set forth (1) the names of the petitioner and the
defendants, as they are known to be by the exercise of
reasonable diligence by the petitioner, and their last
known addresses, (2) the date and record data of the
instrument or other conveyance which immediately
created the mineral interest, (3) an adequate description
of the land as contained therein, (4) the source of title
of the last known owners of the mineral interests, and
(5) a statement that the action is brought for the purpose
of authorizing the execution and delivery of a valid and
present mineral lease for development of the particular
minerals described in the petition, and thereafter, in the
case of any defendant or heir, successor or assign of any
defendant who does not appear to claim ownership of the
defendant’s interest within seven years after the date of
the lease, for the court to order a conveyance of the
defendant’s mineral interest under section seven of this
article, subject to the lease, to the owner of the surface
overlying the mineral interest. In addition, the petition-
er shall send notice by certified mail, return receipt
requested, to the last known address, if there be such,
of all named defendants. In addition, the court may in
its discretion order advertisement elsewhere or by
additional means if there is reason to believe that
additional advertisement might result in identifying and
locating the unknown or missing owners.

(d) The circuit court shall appoint a guardian ad litem
for any unknown or missing owner or abandoning owner
and their unknown heirs, successors and assigns not
known to be alive. The compensation and expenses of the
guardian ad litem shall be fixed by the court and paid
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.

(a) If upon presentation to the court of the petition, and the failure of the named defendants or their heirs, successors and assigns to answer the petition and deny material allegations in the complaint within the time to answer under the West Virginia rules of civil procedure, the court may accept the allegations of the verified petition, excluding allegations made upon information and belief, as prima facie proof of the facts alleged; and if it further appears to the court that (1) the petitioner has met the requirements for a lease under this article, including the evidentiary requirements of section five-b and the notice requirements of section five-c, (2) a diligent effort has been made to identify and locate the present unknown or missing owners and abandoning owners, and (3) the mineral development sought in the petition would be advantageous to the defendants and would further the public policy stated in section one of this article, the court shall appoint a special commissioner therefor and authorize the special commissioner to sell, execute and deliver a valid lease covering the mineral interests in and underlying the lands for the particular mineral development sought in the petition: Provided, That no order authorizing the special commissioner to sell, execute or deliver a lease of said mineral interest, shall be entered sooner than six months following filing of the petition, and the court may in its discretion direct the petitioner to make further efforts to locate the missing or unknown owners or abandoning owners.

(b) Should the court appoint a special commissioner pursuant to subsection (a) of this section, the order of the court shall also (1) require the special commissioner to give a bond in favor of the owners of the mineral interest which is to be leased in a specified amount, (2) provide for all of the rental, royalty, and other provisions of the lease which the special commissioner is authorized to make, except for the initial monetary
consideration for the sale of the lease, (3) specify whether the special commissioner’s sale of the lease shall be public or private, (4) if the order provides for a public sale, determine the notice to be given, and (5) direct that the special commissioner be paid compensation and expenses, including the bond expense, as provided in section eight of this article in an amount agreed upon by the special commissioner and the petitioner; but if no agreement is made within thirty days after the special commissioner is appointed, then the court shall fix the compensation and expenses. The sale shall be for a monetary consideration payable on confirmation of sale. No appraisal shall be required.

(c) The special commissioner shall proceed in compliance with the provisions of the order to sell the lease authorized thereby; and if two or more persons offer to purchase the lease, the sale shall be made to the offeror whose offer is deemed most beneficial to the unknown or missing owner or abandoning owner, and most consistent with the public policy stated in section one of this article. After making the sale, the special commissioner shall make a report thereof to the court. Upon filing the report, the court may hear evidence as to whether or not the sale price and the provisions of the lease are reasonable; and if the court is satisfied with the sale price and the provisions of the lease, the sale of the lease shall be confirmed by the court, whereupon the lease shall be executed, acknowledged and delivered by the special commissioner.

(d) The court shall not authorize a special commissioner’s lease of the mineral interest of any owner whose identity and whereabouts is known, or can be ascertained by diligent inquiry, or is discovered as a result of the action brought hereunder, unless such owner is proved to be an abandoning owner who fails to answer the subject petition, notice having been given as provided in section five of this article.

(e) Any person purporting to be the unknown or missing owner or an abandoning owner, or any heir, successor or assign of an unknown or missing owner or abandoning owner, may appear as a matter of right at
any time prior to the entry of judgment confirming the
special commissioner's lease, for the purpose of estab-
lishing his title to a mineral interest. If the appearing
owner's claim is established to the satisfaction of the
court, the court shall dismiss the action as to the
appearing owner's interest at plaintiff's cost.

(f) The lessee shall promptly deliver the sale consid-
eration and subsequent proceeds, if any, from the lease
to the special receiver of the court, who shall hold and
invest the same for the use and benefit of the unknown
or missing owners or abandoning owners. The court,
upon its own motion or upon motion of the special
receiver, may at any time authorize the special receiver
to expend an amount not to exceed ten percent of the
funds collected by the special receiver for the purpose
of instituting a search for the unknown or missing
owners.

(g) Within seven years after the date of the special
commissioner's lease, any unknown or missing owner or
abandoning owner of a mineral interest leased hereunder may file a motion with the court to re-open the
action, and may thereupon present such proof as the
court may deem necessary to establish the movant's
identity and title to the mineral interest or any part
thereof. If the court finds that the identity and interest
of the movant has been established, and that the movant
has manifested a desire to obtain the benefits of the
proceeds resulting from the lease, the court shall enter
an order (1) documenting the movant's title, (2) assign-
ing all future attributable proceeds to the movant and
(3) directing the special receiver to pay over the funds
then held attributable to the movant's interests. The
circuit clerk of the court shall file and record a certified
copy of the order with the clerk of the county commis-
sion of each county wherein such land is; and from the
time of recordation, the movant shall be deemed the
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.
(a) (1) If an owner of any mineral interest leased under section six of this article remains unknown or missing, or does not disavow the abandonment, for a period of seven years from the date of the special commissioner’s lease, the special receiver shall report the same to the court, whereupon the court shall enter an order naming those who then appear to be surface owners as additional parties and giving notice to them, pursuant to the West Virginia rules of civil procedure, of an opportunity to appear and present proof of ownership in fee of the surface estate. Upon a finding by the court of the present ownership in fee of the surface estate, the court shall (i) order the special commissioner to convey to the proven surface owner, subject to the special commissioner’s lease, the mineral interest specified in the motion, by a deed substantially in the form specified in subsection (b) of this section and (ii) order the special receiver to pay to the surface owner the funds which have accrued to the credit of the mineral interests specified in the motion to the date of his report after payment of all allowable fees, expenses and court costs, including special commissioner’s fees paid or to be paid in amounts determined by the court. After the date of the special commissioner’s deed, the surface owner grantee shall be entitled to receive all proceeds under the lease attributable to the mineral interests specified in the deed.

(2) If the boundaries of the mineral tract subject to the special commissioner’s lease encompass two or more surface tracts, a separate deed shall be made for the mineral interest underlying each surface tract. If a surface tract is owned by more than one person, the deed respecting that surface tract shall convey the mineral interest according to the surface estate and interest of each surface owner.

(b) The special commissioner’s deed may be made in the following form, or to the same effect:

This deed, made the ___________ day of __________________________, 19___, between ________________, special commissioner, grantor, and ________________, grantee,
Witnesseth, that whereas, grantor, in pursuance of the authority vested in him by an order of the circuit court of _______ county, West Virginia, entered on the _____ day of ________, 19__, in civil action no. ______ therein pending, to convey the mineral interest more particularly described below to the grantee,

Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the special commissioner's lease mentioned below, and further subject to all other liens and encumbrances of record, that certain mineral interest in _______ county, West Virginia, more particularly described in the cited order of the circuit court as follows: (here insert the description in the order); and being (here specify "all" or "a portion") of the mineral interest described in that certain special commissioner's lease dated ________, 19__, of record in the office of the clerk of _______ county, in _______book ______, at page_____

Witness the following signature.

________________________________________
Special Commissioner

(c) Upon the delivery of the deed or deeds and the payment or payments as directed in subsection (a) of this section, the special commissioner shall make a final report to the court; and upon approval thereof, the court shall order the discharge of the special commissioner's bond.

(d) Prior to the delivery of the special commissioner's deed, no deed from a surface owner to another shall sever ownership of the surface as such from ownership of any benefits under this article. Any deed purporting to create such a severance shall be void.

§55-12A-8. Petitioner's attorneys' fees, expenses and court costs.

All of the petitioner's attorneys' fees, expenses and court costs incident to the original proceedings authorized under this article shall be paid by the lessee, if
a lease is executed pursuant hereto, and by the peti-
tioner if for any reason no lease is executed. After the
date of the special commissioner’s lease, all expenses and
court costs shall be paid out of funds in the hands of the
special receiver to the extent such funds are available.

§55-12A-9. Limitation of action by unknown or missing
owner or abandoning owner.

After the expiration of seven years from the date of
the special commissioner’s lease, no action may be
brought by any unknown or missing owner or abandon-
ing owner or any heir, successor or assign thereof either
to recover any past or future proceeds accrued or to be
accrued from the lease herein authorized, or to recover
any right, title or interest in and to the mineral interest
subject to the lease.

§55-12A-10. Severability.

If any part of this article is adjudged to be unconsti-
tutional or invalid, such invalidation shall not affect the
validity of the remaining parts of this article; and to this
end, the provisions of this article are hereby declared
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 manufac-
tured 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-1. Compliance with federal standards and vehicle safety.

(a) Before a vehicle not manufactured in accordance with the laws and regulations of the United States Motor Vehicle Safety Act or the United States Clean Air Act may be titled and registered in this state, the following requirements must be met: (1) The dealer or owner of a vehicle sought to be titled and registered must have obtained copies of the bond release letters required by federal law from the United States Environmental Protection Agency and the United States Department of Transportation. Copies of these bond release letters must be displayed to any prospective purchaser whenever the vehicle is offered for sale: Provided, That sections one and two of this article do not apply to antique vehicles or to vehicles especially designed for racing purposes. A vehicle subject to the requirements of this subsection may not be titled as a new motor vehicle. (2) The dealer or owner of a vehicle, upon initial application for a title and registration in this state must submit a receipt or other documentation from the United States Department of the Treasury showing that any and all gas guzzler tax payable on the vehicle under Section 4064 of Title 26, U.S. Code, has been paid by the vehicle importer: Provided, That such receipt or documentation is not necessary for those vehicles not subject to the gas guzzler tax.
(b) The commissioner shall conduct limited inspections of all such vehicles described above, in accordance with the following:

(1) On the occasion of the initial application for a title and registration or as part of any presale inspection mandated by state law, the vehicle shall be inspected for compliance with federal safety standards or conditions which render the vehicle unsafe or hazardous during normal use. This inspection is in addition to the standard vehicle inspection and may not be construed as state approval of the modifications performed to bring the vehicle into compliance with federal standards or as a state certification that the vehicle is free of hazardous conditions. The state will issue a certificate of inspection and approval if the vehicle appears to comply with all federal safety standards. This certificate must be submitted as part of the initial application for a title and registration in this state. Denial of such a certificate is without prejudice to reapplication after the detected noncompliance or unsafe or hazardous condition has been corrected; and

(2) For each vehicle, each time review is sought, the applicant must submit a fee in an amount determined by the commissioner to be sufficient to cover the costs of the presale inspection mandated by this section.

(c) The provisions of this section apply to the initial sale or registration of a vehicle within this state, without regard to whether it has previously been sold or registered in another state.

§17A-3A-2. Consumer disclosure.

Before a motor vehicle not manufactured in accordance with the laws and regulations of the United States Clean Air Act and the United States Motor Vehicle Safety Act can be sold to a consumer in this state, the seller must provide the purchaser with full written disclosure of all modifications performed to the vehicle. This disclosure consists of a description phrased in terms reasonably understandable to a consumer with no specialized technical training, accompanied by a copy of the technical submissions made to the environmental
protection agency and department of transportation in
order to obtain certification of compliance. Failure to
make this disclosure renders the sale voidable.


(a) Before any imported vehicle which has not pre-
viously been titled or registered in the United States
may be titled in this state, the applicant must submit:
(1) A manufacturer's certificate of origin issued by the
actual vehicle manufacturer together with a notarized
translation thereof, or (2) the documents constituting
valid proof of ownership in the country in which the
vehicle was originally purchased, together with a
notarized translation of any such document or (3) with
regard to vehicles imported from countries which cancel
the vehicle registration and title for export, the
documents assigned to such vehicle after the registra-
tion and title have been canceled, together with a
notarized translation thereof.

(b) In the event that the documents submitted as
required by subsection (a) do not name as owner the
current applicant for a certificate of title, the applicant
must also submit reliable proof of a chain of title.

The commissioner shall have the authority to issue a
temporary title for vehicles subject to the provisions of
this section. Application for a temporary title shall
include an affidavit from a U. S. Department of
Transportation approved modification facility, stating
that the standards required by the U.S. Department of
Transportation and the U.S. Environmental Protection
Agency have been met; and further an affidavit from
the vehicle owner stating that all necessary paperwork
has been forwarded to the applicable federal agencies
for consideration of a bond release letter. Temporary
titles shall not be transferable and shall be valid for a
period of time not to exceed ten months.

The fee for the temporary title shall be twenty-five
dollars. Applicable privilege taxes, as provided for in
this or other sections of the code, shall be collected from
the owner upon application for the temporary title, and
additional privilege taxes shall not be required upon
application for permanent titles issued following the issuance of said temporary titles. Receipt of a federal bond release letter shall be required to be filed with the 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.

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

(1) “New motor vehicle dealer” means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling five or more new motor vehicles or new and used motor vehicles in any fiscal year of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

(2) “Used motor vehicle dealer” means every person (other than his agents and employees, if any, while acting within the scope of their authority or employ-
ment), engaged in, or holds himself out to the public to be engaged in, the business in this state of selling five or more used motor vehicles in any fiscal year of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

(3) "House trailer dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used house trailers, or new and/or used house trailers and trailers.

(4) "Trailer dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used trailers.

(5) "Motorcycle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used motorcycles.

(6) "Used parts dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling any used appliance, accessory, member, portion or other part of any vehicle.

(7) "Wrecker or dismantler" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of dealing in wrecked or damaged motor vehicles or motor vehicle parts for the purpose of selling the parts thereof or scrap therefrom.
(8) "New motor vehicles" means all motor vehicles, except motorcycles and used motor vehicles, of a type required to be registered under the provisions of this chapter.

(9) "Used motor vehicles" means all motor vehicles, except motorcycles, of a type required to be registered under the provisions of this chapter which have been sold and operated, or which have been registered or titled, in this or any other state or jurisdiction.

(10) "House trailers" means all trailers designed or intended for human occupancy and commonly referred to as mobile homes or house trailers, but shall not include camping, vacation and travel trailers.

(11) "Trailers" means all types of trailers other than house trailers, and shall include, but not be limited to, pole trailers and semitrailers.

(12) "Sales instrument" means any document resulting from the sale of a vehicle, which shall include, but not be limited to, a bill of sale, invoice, conditional sales contract, chattel mortgage, chattel trust deed, security agreement or similar document.

(13) "Sell," "sale" or "selling" shall, in addition to the ordinary definitions of such terms, include offering for sale, soliciting sales of, negotiating for the sale of, displaying for sale, or advertising for sale, any vehicle, whether at retail, wholesale or at auction. "Selling" shall, in addition to the ordinary definition of that term, also include buying and exchanging.

(14) "Applicant" means any person making application for an original or renewal license certificate under the provisions of this article.

(15) "Licensee" means any person holding any license certificate issued under the provisions of this article.

(16) "Predecessor" means the former owner or owners or operator or operators of any new motor vehicle dealer business or used motor vehicle dealer business.

(17) "Established place of business" shall, in the case of a new motor vehicle dealer, mean a permanent
location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which is or is to be used exclusively for the purpose of selling new motor vehicles or new and used motor vehicles, which shall have space under roof for the display of at least one new motor vehicle and facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by such dealer with respect to motor vehicles sold by him, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times: Provided, however, That the requirement of exclusive use shall be met even though (i) some new and any used motor vehicles sold or to be sold by such dealer or sold or are to be sold at a different location or locations not meeting the definition of an established place of business of a new motor vehicle dealer, if each such location is or is to be served by other facilities and space of such dealer for the servicing and repair of at least one motor vehicle, adequate and suitable as aforesaid, and each such location used for the sale of some new and any used motor vehicles otherwise meets the definition of an established place of business of a used motor vehicle dealer; (ii) house trailers, trailers and/or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article, a separate license certificate is obtained for each such type of vehicle business, which license certificate
remains unexpired, unsuspended and unrevoked; (iii) farm machinery is sold thereat; and (iv) accessory, gasoline and oil, or storage departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(18) "Farm machinery" means all machines and tools used in the production, harvesting or care of farm products.

(19) "Established place of business" shall, in the case of a used motor vehicle dealer, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which is or is to be used exclusively for the purpose of selling used motor vehicles, which shall have facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by such dealer with respect to used motor vehicles sold by him, which shall be easily accessible to the public, shall conform to all applicable laws of the state of West Virginia, and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times: Provided, That if a used motor vehicle dealer has entered into a written agreement or agreements with a person or persons owning or operating a servicing and repair facility or facilities adequate and suitable as aforesaid, the effect of which agreement or agreements is to provide such servicing and repair services and space in like manner as if said servicing
and repair facilities and space were located in or on said
dealer's place of business, then, so long as such an
agreement or agreements are in effect, it shall not be
necessary for such dealer to maintain such servicing and
repair facilities and space at his place of business in
order for such place of business to be an established
place of business as herein defined: Provided further,
That the requirement of exclusive use shall be met even
though (i) house trailers, trailers and/or motorcycles are
sold or are to be sold thereat, if, subject to the provisions
of section five of this article, a separate license
certificate is obtained for each such type of vehicle
business, which license certificate remains unexpired,
unsuspended and unrevoked; (ii) farm machinery is sold
thereat; and (iii) accessory, gasoline and oil, or storage
departments are maintained thereat, if such depart-
ments are operated for the purpose of furthering and
assisting in the licensed business or businesses.

(20) "Established place of business" shall, in the case
of a house trailer dealer, trailer dealer, motorcycle
dealer, used parts dealer and wrecker or dismantler,
mean a permanent location, not a temporary stand or
other temporary quarters, owned or leased by the
licensee or applicant and actually occupied or to be
occupied by him, as the case may be, which shall be
easily accessible to the public, which shall conform to
all applicable laws of the state of West Virginia and the
ordinances of the municipality in which it is located, if
any, which shall display thereon at least one permanent
sign, clearly visible from the principal public street or
highway nearest said location and clearly stating the
business which is or shall be conducted thereat, and
which shall have adequate facilities to keep, maintain
and preserve records, papers and documents necessary
to carry on such business and to make the same
available to inspection by the commissioner at all
reasonable times.

(21) "Manufacturer" means every person engaged in
the business of reconstructing, assembling or reassem-
bling vehicles with a special type body required by the
purchaser if said vehicle is subject to the title and
registration provision of the code.

(22) "Transporter" means every person engaged in the business of transporting vehicles to or from a manufacturing, assembling or distributing plant to dealers, or sales agents of a manufacturer, or purchasers.

(b) Under no circumstances whatever shall the terms "new motor vehicle dealer," "used motor vehicle dealer," "house trailer dealer," "trailer dealer," "motorcycle dealer," "used parts dealer" or "wrecker or dismantler" be construed or applied under this article in such a way as to include a banking institution, insurance company, finance company, or other lending or financial institution, or other person, the state or any agency or political subdivision thereof, or any municipality, who or which owns or shall come in possession or ownership of, or acquire contract rights, or security interests in or to, any vehicle or vehicles or any part thereof and shall sell such vehicle or vehicles or any part thereof for purposes other than engaging in and holding himself or itself out to the public to be engaged in the business of selling vehicles or any part thereof.

(c) It is recognized that throughout this code the term "trailer" or "trailers" is used to include, among other types of trailers, house trailers. It is also recognized that throughout this code the term "trailer" or "trailers" is seldom used to include semitrailers or pole trailers. However, for the purposes of this article only, the term "trailers" shall have the meaning ascribed to it in 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.]
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.

(a) The driver of a vehicle on any street or highway upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus flashing warning signal lights, as referred to in section eight of this article, and said driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. Any such driver acting in violation of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five nor more than two hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words “school bus” in letters not less than eight inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating “school bus” shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual, shall
have all flashing warning lights removed; all lettering
removed or permanently obscured; and such bus shall
be painted a color other than chrome yellow before sale
or transfer is made except when sold or transferred for
the transportation of school children.

(c) The driver of a vehicle upon a highway with
separate roadways need not stop upon meeting or
passing a school bus which is on a different roadway or
when upon a controlled-access highway and the school
bus is stopped in a loading zone which is a part of or
adjacent to such highway and where pedestrians are not
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.
(a) Any owner of a Class A motor vehicle subject to registration under the provisions of article three, chapter seventeen-a of this code, who is:

1. A physically handicapped person with limited mobility;
2. A relative of a person who is a physically handicapped person with limited mobility;
3. A person who regularly resides with a person who is a physically handicapped person with limited mobility; or
4. A person who regularly transports a person who is a physically handicapped person with limited mobility, may apply for a special registration plate or a mobile windshield placard by submitting to the commissioner:

   (i) An application therefor on a form prescribed and furnished by the commissioner, specifying whether the applicant desires a special registration plate or a mobile windshield placard; and

   (ii) A certificate issued by a person licensed to practice medicine in this state stating that the applicant or the applicant’s spouse or a member of the applicant’s immediate family residing with him is a physically handicapped person with limited mobility as defined in this section.

Upon receipt of the application, the physician’s certificate and the registration fee, if he finds that the applicant qualifies for the special registration plate or mobile windshield placard provided for in this subsection, the commissioner shall issue to such applicant an appropriately designed and appropriately designated special registration plate or mobile windshield placard. The special plate shall be used in place of a regular license plate.

As used in this section, a physically handicapped person with limited mobility is any person who suffers from a permanent physical condition making it unduly difficult and burdensome for such person to walk.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the mobile windshield placard provided for in this subsection (a), and any person who falsely certifies that a person is physically handicapped with limited mobility in order that an applicant may be issued the special plate, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he
may otherwise incur, shall be fined not less than one
hundred dollars nor more than one thousand dollars, or
imprisoned in the county jail not more than one year, or
both fined and imprisoned.
(b) Any physically disabled person, any person who is a
relative of a physically disabled person, any person who
regularly resides with a physically disabled person, or any
person who regularly transports a physically disabled
person, may apply for a vehicle decal for a Class A vehicle
by submitting to the commissioner:
(1) An application therefor on a form prescribed and
furnished by the commissioner;
(2) A certificate issued by a person licensed to practice
medicine in this state stating that the applicant or the
applicant's relative is a physically disabled person, or that
the person regularly residing with the applicant or
regularly transported by the applicant is a physically
disabled person, as defined in this section, and stating the
expected duration of the disability; and
(3) A fee of one dollar.
Upon receipt of the application, the physician's
certificate and the registration fee, if he finds that the
applicant qualifies for the vehicle decal provided for in this
subsection, the commissioner shall issue to such applicant
an appropriately designed decal. The decal shall be
displayed on the motor vehicle in the manner prescribed by
the commissioner and shall be valid for such period of time
as the certifying physician has determined that the
disability will continue, which period of time, reflecting the
date of expiration, shall be conspicuously shown on the face
of the decal.
As used in this section, "physically disabled person"
means any person who has sustained a temporary disability
rendering it unduly difficult and burdensome for him to
walk.
Any person who falsely or fraudulently obtains or seeks
to obtain the vehicle decal provided for in this subsection,
and any person who falsely certifies that a person is
physically disabled in order that an applicant may be issued
the vehicle decal, is guilty of a misdemeanor, and, upon
conviction thereof, in addition to any other penalty he may
otherwise incur, shall be fined not less than fifty nor more
than one hundred dollars, or imprisoned in the county jail
not more than thirty days, or both fined and imprisoned.
(c) Free stopping, standing or parking places marked
"reserved for disabled persons" shall be designated in close
proximity to all state, county and municipal buildings and
other public facilities. Such places shall be reserved solely
for physically disabled and handicapped persons during the
hours that such buildings are open for business.
Any person whose vehicle properly displays a valid
special registration plate, mobile windshield placard or
decal, may park the vehicle for unlimited periods of time in
parking zones unrestricted as to length of parking time
permitted: Provided, That this privilege does not mean that
the vehicle may park in any zone where stopping, standing
or parking is prohibited or which creates parking zones for
special types of vehicles or which prohibits parking during
heavy traffic periods during specified rush hours or where
parking would clearly present a traffic hazard. To the
extent any provision of any ordinance of any political
subdivision of this state is contrary to the provisions of this
section, the provisions of this section shall take precedence
and shall apply.
The privileges provided for in this subsection shall apply
only during those times when the vehicle is being used for
the transportation of a physically handicapped or disabled
person. Any person who knowingly exercises, or attempts to
exercise, such privileges at a time when the vehicle is not
being used for the transportation of a physically
handicapped or disabled person is guilty of a misdemeanor,
and, upon conviction thereof, in addition to any other
penalty he may otherwise incur, shall be fined not less than
ten nor more than fifty dollars, or imprisoned in the county
jail for not more than thirty days, or both fined and
imprisoned.
(d) No person may stop, stand or park a motor vehicle in
an area designated, zoned or marked for the handicapped or
physically disabled, when such person is not physically
disabled or handicapped and does not have displayed upon
his vehicle a distinguishing insignia for the handicapped
issued by the commissioner: Provided, That any person in
the act of transporting a handicapped or physically
disabled person, as defined by this article, may stop, stand
or park a motor vehicle not displaying a distinguishing insignia for the handicapped in an area designated, zoned or marked for the handicapped or physically disabled for the limited purposes of loading or unloading his handicapped or physically disabled passenger: Provided, however, That such vehicle shall be promptly moved after the completion of such limited purposes.

Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty-five dollars.

(e) The commissioner shall adopt and promulgate rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code to effectuate the 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.


Every driver who transports a child under the age of nine years in a passenger automobile, van or pickup truck other than one operated for hire, shall, while such motor vehicle is in motion and operated on a street or
highway of this state, provide for the protection of such
child by properly placing, maintaining and securing
such child in a child passenger safety device system
meeting applicable federal motor vehicle safety stand-
ards: Provided, That if such child is between the age of
three and eight, both inclusive, a vehicle seat belt shall
be sufficient to meet the requirements of this section.

Any person who violates any provision of this section
is guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than ten dollars nor more than
twenty dollars.

A violation of this section shall not be deemed by
virtue of such violation to constitute evidence of
negligence or contributory negligence or comparative
negligence in any civil action or proceeding for
damages.

If any provision of this section or the application
thereof to any person or circumstance is held invalid,
such invalidity shall not affect other provisions or
applications of this section, and to this end the subsec-
tions of this section are declared to be severable.

If all seat belts in a vehicle are being used at the time
of examination by a law officer and the vehicle contains
more passengers than the total number of seat belts or
other safety devices as installed in compliance with
federal motor vehicle safety standards, the driver shall
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 village, the regular election of officers shall be held on the second Tuesday in June of the appropriate year, unless otherwise provided in the charter of the city or the special legislative charters of the towns or villages, as the case may be.

7 A municipal election date established by a charter provision may fall on the same day as the county-state primary or general election only when the voting precinct boundaries in the municipality coincide with the voting precinct boundaries established by the county commission or when the charter provides for separate registration books. If a municipal election falls on the same day as the county-state primary or general election, the municipality and county may agree to use the county election officials in the municipal elections, if practicable, or the municipality may provide for separate election officials.

18 A municipal election date established by charter provision may fall within twenty-five days of a county-state primary or general election only where separate registration books are provided and maintained for the municipal election.

23 Any municipality which establishes its election date by charter provision must comply with the provisions of this
section or the election date shall be the second Tuesday of June. The language of this section shall not be construed to prevent any city, town or village from amending the provisions of its charter or special legislative charter, as the case may be, to provide that its municipal election be held on some day other than the second Tuesday in June.

Officers of a city may be elected for a four-year term at the same election at which a proposed charter, proposed charter revision or charter amendment providing for four-year terms is voted upon. The ballots or ballot labels used for the election of officers must indicate that the officers will be elected for four-year terms if the proposed charter, revision or amendment is approved. Officers of a town or village may be elected for a four-year term upon approval by a majority of the legal votes cast at a regular municipal election of a proposition calling for four-year terms. The ballots or ballot labels used for the election of officers must indicate that the officers will be elected for four-year terms if the proposition is approved.

CHAPTER 116
(H. B. 1937—By Delegate Roop and Delegate Ryan)

[Passed March 8, 1986; 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 authority to negotiate for, secure and adopt for the regular employees thereof (other than provisional, temporary, emergency and intermittent employees) who are in employee status with such municipality on and after the effective date of this section and for their spouses and dependents, a policy or policies of group insurance written by a carrier or carriers chartered under the laws of any state and duly licensed to do business in this state and covering life; health; hospital care; surgical or medical diagnosis, care, and treatment; drugs and medicines; remedial care; other medical supplies and services; or any other combination of these; and any other policy or policies of group insurance which in the discretion of the governing body bear a reasonable relationship to the foregoing coverages. The provisions and terms of any such group plan or plans of insurance shall be approved in writing by the insurance commissioner of this state as to form, rate and benefits.

2. The municipality is hereby authorized and empowered to pay the entire premium cost, or any portion thereof, of said group policy or policies. Whenever the above-described regular employees shall indicate in writing that they have subscribed to any of the aforesaid insurance plans on a group basis and the entire cost thereof is not paid by the municipality, the municipality is hereby authorized and empowered to make periodic premium deductions of the amount of the contribution each such subscribing employee is required to make for such participation from the salary or wage payments due each such subscribing employee as specified in a written assignment furnished to the municipality by each such subscribing employee.
When a participating employee shall retire from his employment, he may, if he so elects, remain a member of the group plan and retain coverage for his spouse and dependents, by paying the entire premium for the coverage involved. Spouses and dependents of any deceased member may remain a member of the group plan by paying the entire premium for the coverage: Provided, That nothing herein shall be construed as prohibiting the municipality from paying a portion or all of the cost of any coverage. In the event that a municipality changes insurance carriers, as a condition precedent to any such change, the municipality shall assure that all retirees, their spouses and dependents, and the spouses and dependents of any deceased member are guaranteed acceptance, at the same cost for the same coverage as regular employees of similar age 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:
§8-14-17. Vacancies filled by promotions; eligibility for promotion; rights of chief.

1 Vacancies in positions in a paid police department of a Class I or Class II city shall be filled, so far as practicable, by promotions from among individuals holding positions in the next lower grade in the department. Promotions shall be based upon merit and fitness to be ascertained by competitive examinations to be provided by the policemen's civil service commission and upon the superior qualifications of the individuals promoted, as shown by their previous service and experience:

Provided, That except for the chief of police, no individual shall be eligible for promotion from the lower grade to the next higher grade until such individual shall have completed at least two years of continuous service in the next lower grade in the department immediately prior to said examination: Provided, however, That notwithstanding the provisions of section six of this article, any member of a paid police department of a Class I or Class II city now occupying the office of chief of such paid police department, or hereafter appointed to such office, shall, except as hereinafter provided in this section, be and shall continue to be entitled to all of the rights and benefits of the civil service provisions of this article, except that he may be removed from such office of chief of police without cause, and the time spent by such member in the office of such chief of police shall be added to the time served by such member during the entire time...
he was a member of said paid police department prior to
his appointment as chief, and shall in all cases of removal,
except for removal for good cause, retain the regular
rank within said paid police department which he held
at the time of his appointment to the office of chief of
police or which he has attained during his term of service
as chief of police. The provisions of this section shall be
construed to apply and to inure to the benefit of all
individuals who have ever been subject to the provisions
of this article. The commission shall have the power to
determine in each instance whether an increase in salary
constitutes a promotion.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPART-
MENTS; CIVIL SERVICE FOR PAID FIRE DE-
PARTMENTS.

§8-15-22. Vacancies filled by promotions; eligibility for promo-
tion.

Vacancies in positions in a paid fire department shall be
filled, so far as practicable, by promotions from among
individuals holding positions in the next lower grade in
the department. Promotions shall be based upon merit
and fitness to be ascertained by competitive examinations
to be provided by the firemen's civil service commission
and upon the superior qualifications of the individuals
promoted, as shown by their previous service and experi-
ence: Provided, That no individual shall be eligible for
promotion from the lower grade to the next higher grade
until such individual shall have completed at least two
years of continuous service in the next lower grade in the
department immediately prior to said examination. The
commission shall have the power to determine in each
instance whether an increase in salary constitutes a pro-
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.]
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 sewage 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

13. Public Bonded Indebtedness.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article

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 article, any municipality may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, a waterworks system, including acquisition of the municipal waterworks system resulting from the severance of a combined waterworks and sewerage system pursuant to section one-b, article twenty of this chapter, or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

17 When used in this article, the term “waterworks system” shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.
When used in this article, the term "electric power system" means a system or facility which produces electric power in its entirety or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and all other facilities necessary, appropriate, useful, or convenient or incidental in connection with or to an electric power supply system.

§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

(a) Every municipality issuing bonds under the provisions of this article shall thereafter, so long as any of such bonds remain outstanding, repair, maintain and operate its waterworks or electric power system as hereinafter provided and shall charge, collect and account for revenues therefrom as will be sufficient to pay all repair, maintenance and operation costs, provide a depreciation fund, retire the bonds and pay the interest requirements of the bonds as the same become due. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks or electric power system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which such bonds have been issued: Provided, That payment of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality directly to the United States of America or said agency or department thereof. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated date of completion.
(b) If the proceeds of the bonds, because of error or otherwise, shall be less than the cost of the property or undertaking for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority over the bonds first authorized and issued.

(c) If the proceeds of the bonds shall exceed the cost of the property or undertaking, the surplus shall be converted into the fund thereon.

PART V. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

§8-19-17. Grants, loans and advances.

Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of waterworks systems and the construction of additions, betterments and improvements to existing waterworks systems or to existing electric power systems, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said waterworks system or electric power system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private
agency, corporation or individual. Any other provisions of
this article to the contrary notwithstanding, interest on any
such loan or temporary advance may be paid from the
proceeds thereof until the maturity of such notes or other
negotiable instrument.

In no event shall any such loan or temporary advance be a
general obligation of the municipality and such loans or
temporary advances, including the interest thereon, shall
be paid solely from the sources specified in this section.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

§8-20-1b. Severance of combined system.

Any municipality which has combined its waterworks
and sewerage system under the provisions of this article, or
pursuant to provisions of any other law, may hereafter sever
said combined waterworks and sewerage system if the
following conditions are met:

(a) An ordinance is enacted by the governing body of the
municipality severing the combined waterworks and
sewerage system into a separate waterworks system and a
separate sewerage system.

(b) If revenue bonds or notes or other obligations with a
lien on or pledge of the revenues of said combined
waterworks and sewerage system, or any part thereof, are
outstanding, then the municipality must provide in said
ordinance (i) that the severance of the combined
waterworks and sewerage system is not effective until all
such outstanding revenue bonds or notes or other
obligations with a lien on or pledge of the revenues of the
system, or any part thereof, are paid and (ii) the method for
paying said outstanding revenue bonds or notes or other
obligations. For the purposes of this section, said
municipality may provide for payment of said outstanding
revenue bonds or notes or other obligations by:

(1) Depositing moneys and funds with the West Virginia
municipal bond commission or in escrow with a corporate
trustee, which may be a trust company or bank having
powers of a trust company within or without the state of
West Virginia selected by the issuer to pay interest when
due and to pay principal when due, whether at maturity or earlier redemption;

(2) Depositing securities with the municipal bond commission or said escrow trustee, the principal of and earnings on which will provide moneys sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption; or

(3) Depositing with the municipal bond commission or said escrow trustee any combination of the foregoing sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption.

(c) If the combined waterworks and sewerage system is under the supervision and control of a separate committee, board or commission, then the governing body of the municipality must provide for the dissolution of such committee, board or commission, and the creation of such other committees, boards or commissions as may be required by law.

§8-20-12. Use of revenues; sinking fund.

All revenues derived from the operation of any combined waterworks and sewerage system under the provisions of this article shall be set aside as collected and used only for the purpose of paying the cost of repairing, maintaining and operating such system, providing an adequate reserve fund, an adequate depreciation fund, and paying the principal of and interest upon the revenue bonds issued by the municipality under the provisions of this article. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the combined waterworks and sewerage system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which such bonds have been issued: Provided, That payments of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality
directly to the United States of America or said agency or department thereof.

PART IV. Grants, Loans and Advances; Cumulative Authority.


Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of combined waterworks and sewerage systems and the construction of additions, betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said combined waterworks and sewerage system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the 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-5. Issuance of refunding bonds; application of proceeds.


The following terms or words wherever used or referred to in this article shall have the following meaning, unless a different meaning plainly appears from the context:

The term "public body" means any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, and the state of West Virginia acting through any of its agencies, boards, commissions or departments, having power to issue revenue bonds.

The term "governing body" means a board, council or other body having power to borrow money on behalf of a public body.

The term "law" means any act or statutes, general, special or local, of this state, including, without being limited to, the charter of any public body.

The term "enterprise" means any work, undertaking, or project which the public body is or may hereafter be authorized to acquire or construct and from which the public body has heretofore derived or may hereafter derive revenues, for the refinancing of which enterprise refunding bonds are issued under this article, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto; and for the purposes of this article "enterprise" includes the waterworks system or the sewerage system, or both said systems, resulting from the severance of a combined waterworks and sewerage system pursuant to section one-b, article twenty, chapter eight of this code, all as the governing body shall authorize in the ordinance.
The term "revenues" means all fees, tolls, rates, rentals and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the public body from the operation of any enterprise or arising from any enterprise, and including earnings derived from investments and bank deposits.

The term "revenue bonds" means notes, bonds, certificates or other obligations of a public body heretofore or hereafter issued and outstanding under any law and which by their terms are payable from the revenues derived by such public body from the operation of an enterprise.

The term "refunding bonds" means notes, bonds, certificates or other obligations of a public body issued pursuant to this article.

The term "holder of bonds" or "bondholder" or any similar term means any person who shall be the bearer of any outstanding refunding bond or refunding bonds registered to bearer or not registered, or the registered owner of any such outstanding refunding bond or refunding bonds which shall at the time be registered other than to bearer.

The words "net interest cost" when referring to an outstanding issue of revenue bonds to be refunded, means the total amount of interest which would accrue on such revenue bonds from the date of the refunding bonds to the respective maturity dates of the outstanding revenue bonds to be refunded, without regard to any retained options of redemption.

The words "net interest cost" when referring to a proposed issue of refunding bonds, means the total amount of interest to accrue on the refunding bonds from their date to their respective maturities, without regard to any retained options of redemption, plus the amount of any discount below par or less the amount of any premium above par at which the bonds may be sold.

The words "net effective interest rate" when referring to a proposed issue of refunding bonds, means the net interest cost of said refunding bonds divided by the product obtained by multiplying the aggregate principal amount of such refunding bonds maturing on each maturity date by the number of years from the date of the refunding bonds to
their respective maturities, without regard to any retained
options of redemption.

The term "certified public accountant" means an
independent certified public accountant or firm of certified
public accountants licensed to practice in this state.

Words importing the singular number shall include the
plural number in each case and vice versa, and words
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
   exchanged for not less than a like principal amount of the
   revenue bonds to be refunded, or may be sold at public or
   private sale, or may be exchanged in part and sold in part, in
   such manner and upon such terms as may be determined by
   the governing body to be for the best interests of the public
   body: Provided, That such refunding bonds shall not be sold
   or exchanged at a price lower than a price which will show a
   net saving to the issuer after deducting all expenses of the
   refunding: Provided, however, That if the governing body
determines that one of the purposes of issuing such
refunding bonds is to effect the release, termination or
modification of liens, restrictions, conditions or limitations
imposed in connection with the bonds which are to be
refunded, then such refunding bonds may be issued without
the necessity of showing a net saving to the issuer, in which
event such refunding bonds shall bear interest at such rate
or rates as the governing body may determine, but such rate
or rates shall not exceed the maximum stated rate of
interest which the revenue bonds to be refunded thereby
could bear if they were being issued as of the date of
issuance of such refunding bonds, and such refunding
bonds may not be sold or exchanged at a price which would
result in a net interest cost in excess of the maximum net
interest cost which the revenue bonds to be refunded could
be sold or exchanged for if they were being issued as of the
date of issuance of such refunding bonds.

2. If any such refunding bonds are to be sold, they may be
   issued in such principal amount as may be determined
   advisable by the governing body including, without
   limitation, the aggregate principal amount of the revenue
bonds to be refunded, interest accrued and to accrue to the
date or dates on which the revenue bonds being refunded
are scheduled to mature or to be redeemed prior to
maturity, any redemption premiums which must be paid in
order to refund such outstanding revenue bonds and any
costs and expenses of issuing the refunding bonds and
providing for retirement of revenue bonds to be refunded. If
sold, the net proceeds shall either be immediately applied to
the payment or redemption and retirement of the revenue
bonds to be refunded, or the net proceeds of the refunding
bonds may be invested at the discretion and under the
supervision of the escrow agent in whole, or in part, (a) in
direct obligations issued by the United States of America or
one of its agencies, (b) in obligations unconditionally
guaranteed by the United States of America as to principal
and interest, or (c) in certificates of deposit of a banking
corporation or association which is a member of the federal
deposit insurance corporation, or successor; but any such
certificates of deposit must be fully secured as to both
principal and interest by pledged collateral consisting of
direct obligations of or obligations guaranteed by the
United States of America having a market value, excluding
accrued interest, at all times at least equal to the amount of
the principal of an accrued interest on such certificates of
deposit. Any such investments must mature, or be payable
in advance of maturity at the option of the holder, and must
bear interest in such manner as to provide funds which,
together with uninvested money placed in the hereinafter
mentioned escrow, will be sufficient to pay when due or
called for redemption the revenue bonds refunded, together
with interest accrued and to accrue thereon and redemption
premiums, if any, and such refunding bond proceeds or
obligations so purchased therewith shall, and with other
funds legally available to the public body for such purpose
may, be deposited in escrow with the West Virginia
municipal bond commission or a corporate trustee, which
may be a trust company or bank having powers of a trust
company within or without the state of West Virginia, to be
selected by the issuer to be held in trust for the payment and
redemption of the revenue bonds refunded, and such money
and obligations and any reinvestment thereof shall be held
in trust by such escrow agent for the payment of interest on
the refunded bonds when due, and principal thereof and
applicable redemption premiums, if any, when due, or upon
the date or dates for which they shall have been called for
redemption, or upon an earlier voluntary surrender at the
option of the escrow agent; provided if interest earned by
any investment in such escrow is shown to be in excess of
the amounts required from time to time for the payment of
interest on and principal of the refunded revenue bonds,
including applicable redemption premium, then such
excess may be withdrawn from escrow and disbursed by the
public body as are other revenues of the enterprise. Any
moneys in the sinking or reserve funds or other funds
maintained for the outstanding revenue bonds to be
refunded may be applied in the same manner and for the
same purpose as are the net proceeds of refunding bonds or
may be deposited in the special fund or any reserve funds
established for account of the refunding bonds. The term
"net proceeds" as used above shall mean the gross proceeds
of the refunding bonds after the deduction therefrom of all
accrued interest, costs and expenses incurred in connection
with the authorization and issuance of the refunding bonds
and the retirement of the outstanding revenue bonds, and
including all costs and expenses resulting from price
variations to par or otherwise incurred in the purchase of
obligations for escrow and in the disposition of the
refunding bonds.

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-2. Purposes; article governs over charter provisions.

1 This article may be cited as "Public Obligations Registration Act."

§13-2F-2. Purposes; article governs over charter provisions.

1 The purpose of this article is to provide a mechanism for public bodies in the state to issue public obligations in compliance with section 310(b)(1) of the tax equity and fiscal responsibility act of one thousand nine hundred eighty-two, United States Internal Revenue Code section 103(j), as amended.
2 To fulfill the purpose, this article shall govern notwithstanding any charter provisions.


1 The following terms wherever used or referred to in this article shall have the following meanings, unless a different meaning plainly appears from the context:
2 The term "public body" means any city, town, county commission, building commission, board of education, public service district, political subdivision or any other public entity, whether created before, on or after the effective date of this article, and the state of West Virginia acting through any of its agencies, boards, commissions or departments, having power to issue public obligations.
3 The term "public obligation" means notes, bonds, certificates or other obligations of a public body issued and outstanding on and after the first day of July, one thousand nine hundred eighty-six.
4 The term "registered" means, with respect to a public obligation, an obligation the ownership of which is noted on books of registration kept by a registrar and which is represented by certificates or other instruments to which no coupons for interest payments are attached.
5 The term "book-entry" means, with respect to a public obligation, an obligation the ownership of which is noted on books of registration kept by a registrar, but which
ownership is not represented by any instrument.

The term "official registrar" means the official designated by the specific provisions of this code pursuant to which a public obligation is issued as the registrar of the public obligation and, in lieu of statutory designation, the person so designated by the act of the public body authorizing the issuance of the specific public obligation.

§13-2F-4. Authority to issue public obligations in registered and book entry forms.

Notwithstanding any other provision of this code to the contrary, on and after the first day of July, one thousand nine hundred eighty-six, any public body may issue public obligations in registered or book entry form in addition to any form authorized by the specific provisions of this code pursuant to which the public obligations are issued.

§13-2F-5. Powers of official registrar; designee.

The official registrar shall (a) act as transfer agent or registrar for the exchange or transfer of registered public obligations or maintain the records so that public obligations in book-entry form may be effected, or (b) contract with or otherwise designate a bank, trust company or other person to act as transfer agent or registrar for the registered public obligations or maintain the records so that public obligations in book-entry form may be effected. The bank, trust company or other person may include the federal government or any of its agencies or instrumentalities and may be located or have its principal office within or without the state. Public obligations in book-entry form shall be effected by means of entries on the record of the official registrar or his designee which shall reflect the description of the issue, the principal amount, the interest rate, the maturity date and the owner of the public obligation and other information as is considered by the official registrar or his designee to be appropriate. The official registrar or his designee may effect conversion between book-entry public obligations and registered public obligations for owners of public obligations who request a change. The official registrar or his designee shall issue a confirmation of the transaction in the form of a written advice. The official registrar or his designee shall

1 Notwithstanding any other provision of this code to the contrary, the books of registry held by the official registrar or his designee shall be confidential, and the information contained therein shall not be available to the public.


1 The provisions of this article shall be effective with respect to public obligations which have prior to the first day of July, one thousand nine hundred eighty-six, been approved by the voters of the issuer of the public obligations at an election on the question of issuing public obligations in coupon and registered form, or in coupon form only, and the public obligations need not be resubmitted to the voters for the purpose of approving the issuance of the public obligations in registered form only.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.


§16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.

1 Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate and maintain within and/or without the corporate limits of such municipal corporation, a sewage collection system and/or a sewage treatment plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful
and convenient for the collection and/or treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil and industrial waste of such municipal corporation and/or sanitary district, including acquisition of the municipal sewerage system resulting from the severance of a combined waterworks and sewerage system pursuant to section one-b, article twenty, chapter eight of this code, and shall have authority to acquire by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights-of-way and property therefor, within and/or without the corporate limits of such municipal corporation and/or sanitary district, and to issue revenue bonds to pay the cost of such works and property; and any such municipality may serve and supply the facilities of such sewerage system within the corporate limits of such municipality and within the area extending twenty miles beyond the corporate limits of such municipality: Provided, That such municipality shall not serve or supply the facilities of such sewerage system within the corporate limits of any other municipality without the consent of the governing body thereof. No obligations shall be incurred by any such municipality and/or sanitary district in such construction or acquisition except such as is payable solely from the funds provided under the authority of this article.


At or before the issuance of any such bonds the governing body shall by said ordinance create a sinking fund, to be remitted to and administered by the West Virginia municipal bond commission, for the payment of the bonds and the interest thereon and the payment of the charges of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the works, hereby defined to mean the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into said sinking fund at intervals to be determined by ordinance prior to issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the
payment of the bonds as they fall due, or, if all bonds mature
at one time, the proper maintenance of a sinking fund in
such amounts as are necessary and sufficient for the
payment thereof at such time; (d) a margin for safety and for
the payment of premiums upon bonds retired by call or
purchase as herein provided, which margin, together with
any unused surplus of such margin carried forward from
the preceding year, shall equal ten percent of all other
amounts so required to be paid into the sinking fund. Such
required payments shall constitute a first charge upon all
the net revenue of the works. Prior to the issuance of the
bonds the board may by ordinance be given the right to use
or direct the West Virginia municipal bond commission to
use such sinking fund or any part thereof in the purchase of
any of the outstanding bonds payable therefrom at the
market price thereof, but not exceeding the price, if any, at
which the same shall in the same year be payable or
redeemable, and all bonds redeemed or purchased shall
forthwith be cancelled and shall not again be issued. After
the payments into such fund as herein required, the board
may at any time in its discretion transfer all or any part of
the balance of the net revenues, after reserving an amount
deemed by the board sufficient for operation, repair and
maintenance for an ensuing period of not less than twelve
months and for depreciation, into the sinking fund or into a
fund for extensions, betterments and additions to the
works. The amounts of the balance of the net revenue as and
when so set apart shall be remitted to the West Virginia
municipal bond commission to be retained and paid out by
said commission consistent with the provisions of this
article and with the ordinance pursuant to which such
bonds have been issued. The West Virginia municipal bond
commission is hereby authorized to act as fiscal agent for
the administration of such sinking fund, under any
ordinance passed pursuant to the provisions of this article,
and shall invest all such sinking funds as provided by
general law. Notwithstanding the foregoing, payments of
principal and interest on any bonds owned by the United
States of America or any agency or department thereof may
be made by the governing body directly thereto.

1 Any municipality is authorized and empowered to accept
loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition or construction of said sewage works and the construction of betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said sewage works or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.


Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable
instruments issued in the manner, and subject to the
privileges and limitations, set forth with respect to bonds
authorized to be issued under the provisions of this article,
for the purpose of paying part or all of the cost of
construction or acquisition of water systems, sewage
systems or gas facilities, or all of these, and the other
purposes herein authorized, from any authorized agency or
from the United States of America or any federal or public
agency or department of the United States or any private
agency, corporation or individual, which loans or
temporary advances, including the interest thereon, may be
repaid out of the proceeds of the bonds authorized to be
issued under the provisions of this article, the revenues of
the said water system, sewage system or gas facilities or
grants to the public service district from any authorized
agency or from the United States of America or any federal
or public agency or department of the United States or from
any private agency, corporation or individual or from any
combination of such sources of payment, and to enter into
the necessary contracts and agreements to carry out the
purposes hereof with any authorized agency or the United
States of America or any federal or public agency or
department of the United States, or with any private
agency, corporation or individual. Any other provisions of
this article to the contrary notwithstanding, interest on any
such loans or temporary advances may be paid from the
proceeds thereof until the maturity of such notes or other
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; FIREFRANKS PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.


1 (a) The monthly sum to be paid to each member eligible for disability under the provisions of section twenty-three-a of this article, shall be equal to sixty percent of the monthly salary being received by such member, at the time he is so disabled, or the sum of five hundred dollars per month, whichever shall be greater: Provided, That the limitation provided in subsection (b) of this section is not exceeded.

(b) Effective for any member who becomes eligible for disability benefits on or after the first day of July, one thousand nine hundred eighty-one, under the provisions of section twenty-three-a of this article, as a proximate result of service rendered in the performance of his duties within such departments, his monthly disability payment as provided in subsection (a) of this section shall not, when aggregated with the monthly amount of state workers' compensation, result in such disabled member receiving a total monthly income from such sources in excess of one hundred percent of the basic compensation which is paid to members holding the same position which such member held within such department at the time of his disability. Lump sum payments of state workers' compensation benefits shall not be considered for purposes of this subsection unless such lump sum payments represent commuted values of monthly state workers' compensation benefits.

(c) Any member who has served on active duty with
the armed forces of the United States as described in
section twenty-seven of this article, whether prior or
subsequent to becoming a member of a paid police or
fire department covered by the provisions of this article,
and who, on the first day of July, one thousand nine
hundred eighty-six, is receiving or thereafter receives a
disability pension, shall receive in addition to the sixty
percent or minimum five hundred dollars authorized in
subsection (a) of this section, one additional percent for
each year served in active military duty, up to a
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.


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
from any cause other than as specified in subsection (b) of this section before retirement on a disability pension under the provisions of, prior to the first day of July, one thousand nine hundred eighty-one, section twenty-four of this article, or after the thirtieth day of June, one thousand nine hundred eighty-one, section twenty-three-a and twenty-four of this article or a retirement pension under the provisions of subsection (a) or both subsections (a) and (b), section twenty-five of this article, leaving in either case surviving a spouse, or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; or

(2) Any former member of any such department who is on a disability pension prior to the first day of July, one thousand nine hundred eighty-one, under section twenty-four of this article, or after the thirtieth day of June, one thousand nine hundred eighty-one, under sections twenty-three-a and twenty-four of this article, or is receiving or is entitled to receive retirement pension benefits under the provisions of subsection (a) or both subsections (a) and (b), section twenty-five of this article, dies from any cause other than as specified in subsection (b) of this section leaving in either case surviving a spouse or any dependent child or children under the age of eighteen years or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; then in any of the cases set forth above in (1) and (2) the board of trustees of such pension and relief fund shall, immediately following the death of such member, pay to or for each of such entitled surviving dependents the following pension benefits: To such spouse, until death or remarriage, a sum per month equal to sixty percent of such member's pension or, in the event such member was not receiving a pension at the time of his death, a sum per month equal to sixty percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, or the sum of three hundred dollars per month, whichever is greater; to each such dependent child, a sum per month equal to twenty percent of such member's pension or, in the event such member was not receiving a pension on the date
of his death, a sum per month equal to twenty percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, or until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent orphaned child, a sum per month equal to twenty-five percent of such member's pension or, in the event such member was not receiving a pension at the time of his death, a sum per month equal to twenty-five percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent orphaned child, a sum per month equal to twenty-five percent of such member's pension or, in the event such member was not receiving a pension at the time of his death, a sum per month equal to twenty-five percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent father or mother, a sum per month for each equal to ten percent of such member's pension or, in the event such member was not receiving a pension on the date of his death, a sum per month equal to ten percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent brother or sister, the sum of fifty dollars per month until such individual attains the age of eighteen years or marries, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed one hundred dollars per month. If at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments. In no case shall the payments to the surviving spouse and
children be cut below sixty-five percent of the total amount
paid to all dependents.
(b) The surviving spouse, child or children, or
dependent father or mother, or dependent brothers or
sisters, of any such member who dies by reason of service
rendered in the performance of such member’s duties shall,
regardless of the length of such member’s service and
irrespective of whether such member was or was not
entitled to receive, or was or was not receiving, disability
pension or temporary disability payments at the time of his
death, receive the death benefits provided for in subsection
(a) of this section. If such member had less than three years’
service at the time of his death, the member’s pension shall
be computed on the basis of the actual number of years of
service.
(c) If a member dies without leaving a spouse,
dependent child or children, or dependent father or mother,
dependent brothers or sisters, his contributions to the
fund plus six percent interest shall be refunded to his
named beneficiary or, if no beneficiary has been named, to
his estate to the extent that such contributions plus interest
exceed any disability or retirement benefits that he may
have received before his death.
(d) The provisions of this section shall not be construed
as creating or establishing any contractual or vested rights
in favor of any individual who may be or become qualified
as a beneficiary of the death benefits herein authorized to
be made, all the provisions hereof and benefits provided for
hereunder being expressly subject to such subsequent
legislative enactments as may provide for any change,
modification or elimination of the beneficiaries or benefits
specified herein.

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
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.

A municipal planning commission shall consist of not less than five nor more than fifteen individuals, the exact number to be specified in the ordinance creating such commission, all of whom shall be freeholders and residents of the municipality, who shall be qualified by knowledge and experience in matters pertaining to the development of the municipality, who shall include representatives of business, industry and labor, and who shall be nominated by the administrative authority and confirmed by the governing body of the municipality or appointed by the governing body where the administrative authority and governing body are the same. At least three fifths of all of the members must have been residents of the municipality for at least one year prior to nomination and confirmation or appointment. One member of the commission shall also be a member of the governing body of the municipality and one member shall also be a member of the administrative department of the municipality, the term of these two members to be coextensive with the term of office to which they have been elected or appointed, unless the governing body and administrative authority of the municipality at the first regular meeting of the commission each year designate others to serve as the municipality's representatives. The remaining members of the commission first selected shall serve respectively for
terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall be selected for terms of three years each. Vacancies shall be filled for the unexpired term only, in the same manner as original selections are made. Members of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

§8-24-6. County planning commission generally.

A county planning commission shall consist of not less than five nor more than fifteen individuals, the exact number to be specified in the ordinance creating such commission, all of whom shall be freeholders and residents of the county, who shall be qualified by knowledge and experience in matters pertaining to the development of the county, who shall include representatives of business, industry, labor and farming, and who shall be appointed by the county commission. At least three fifths of all of the members must have been residents of the county for at least one year prior to appointment. One member of the commission shall also be a member of the county commission, the term of such member to be coextensive with the term of office to which he has been elected, unless the county commission appoints another member to serve as its representative. The remaining members of the commission first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall be appointed for terms of three years each. Vacancies shall be filled by appointment by the county commission for the unexpired term only. Members of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties. An individual may at the same time serve as a member of a municipal planning commission and as a member of a county planning commission.
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.

A purchase of or contract for all supplies, equipment and materials and a contract for the construction of facilities by any authority, when the expenditure required exceeds the sum of five thousand dollars, shall be based on competitive sealed bids: Provided, That there are specifically excepted from the aforesaid requirement purchases of and contracts for replacement parts for urban mass transportation vehicles previously purchased by such authority. Such bids shall be obtained by public notice published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the service area of such authority. Such publication shall be made at least fourteen days before the final date for submitting bids. In addition to such publication, the notice
may also be published by any other advertising me-
dium such authority may deem advisable, and such
authority may also solicit sealed bids by sending requests
by mail to prospective suppliers and by posting notice on
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
department of natural resources pursuant to article three, chapter twenty of this code is hereby abolished. And, except as otherwise provided in this article, all powers and duties previously exercised by the director of natural resources under subsection (13), section seven, article one and article three, chapter twenty of this code, except those powers and duties relating solely to wildlife areas as described in section three, article three, chapter twenty of this code are hereby transferred to the division of forestry herein created in the department of agriculture. All books, papers, maps, charts, plans, literature and other records, equipment, personnel, buildings, structures, other tangible properties and assets and appropriations used by or assigned to the division shall be transferred with the program. However, nothing in this article shall be construed as to transfer the legal title to any real property possessed by the department of natural resources prior to the thirtieth day of June, one thousand nine hundred eighty-five. The division of forestry of the department of agriculture shall have within its jurisdiction and supervision the state forests, other forests and woodland areas, the protection of forest areas from injury and damage by fire, disease, insects and other pestilences and forces the management of forest areas for natural resources, conservation and undeveloped recreational activities, administration of the southeastern interstate forest fire protection compact and other compacts and agreements relating to forest management and husbandry, and the administration and enforcement of laws relating to the conservation, development, protection, use and enjoyment of all forest land areas of the state consistent with the provisions of this chapter. All moneys collected from the sale of timber realized through management of the state-owned forests and the sale of seedlings from the tree nurseries shall be paid into the state treasury and into a special account therein to be subsequently appropriated to the department of agriculture for the administration of this article.

The division of forestry of the department of agriculture shall have jurisdiction to regulate the digging, possession and sale of native, wild or cultivated ginseng: Provided, That the digging season for wild, native or cultivated...
ginseng shall begin on the fifteenth day of August and end on the thirtieth day of November of each year unless otherwise authorized by the director. Ginseng dealers shall:
(a) Obtain a ginseng dealer’s permit from the director; (b) keep on forms provided by the director accurate records for all ginseng acquired showing the year harvested, the date acquired by the dealer, county of origin, weight and whether wild or cultivated; and (c) have all records and all acquired ginseng inspected by the director at official ginseng inspection stations for the purpose of certifying the dealer’s records and issuing a certificate documenting the inspection and the weight of the ginseng. All ginseng dug in West Virginia must be certified by the director before being transported or shipped out of the state. No person shall have in his possession uncertified green ginseng from the first day of April through the fourteenth day of August.

The chief of the division shall be designated state forester and shall be responsible for the execution and administration of the provisions of this article as an integral part of the natural resources program of the state. In addition to meeting merit system or civil service qualifications and requirements, the state forester shall be a graduate of an accredited school of forestry with practical experience and training in forestry field organization and programs. All other personnel shall be transferred with the current merit or civil service ratings they now hold under the civil service system.

The state forester shall study means and methods of implementing the provisions of section fifty-three, article six of the Constitution of West Virginia, relating to forest lands, and shall prepare and recommend to the commissioner legislation thereon.

The commissioner of the department of agriculture shall meet with the state forester and the director of the department of natural resources prior to the first day of June, one thousand nine hundred eighty-five, to facilitate the orderly transfer of the forestry division, books, papers, maps, charts, plans, literature, records, equipment, buildings, structures and other tangible properties and assets. The director of the department of natural resources shall cooperate fully to ensure that present forestry operations and programs are not discontinued prior to the
transfer which shall be the first day of July, one thousand
nine hundred eighty-five. The director of the department of
natural resources and the commissioner shall work out a
pro rata agreement for continuation of the present
occupancy of any buildings transferred that are occupied
by the department of natural resources personnel, other
than personnel of the forestry division and for any buildings
that are not transferred, but which are partially occupied
by personnel of the forestry division.

The state forester shall immediately after the transfer of
the division of forestry establish a system to divide the
forests being transferred to the department of agriculture
for management from the cabins, lodges and improved
recreational facilities which shall remain with the parks
division of the department of commerce.

In establishing the division lines, the commissioner and
the state forester shall cooperate fully to ensure that
management of improved property essential to the parks
division is not transferred.

In the event of disagreement over the placement of a
division line or dual occupancy of a building, the
disposition shall be decided by the Legislature's joint
committee on government and finance at a regularly
scheduled meeting. The transfer of management shall
include a transfer of all appurtenances, equipment,
products, inventories and forest facilities.

All personnel employed in the division of forestry within
the department of natural resources and whose
employment is being transferred to the department of
agriculture shall retain their coverage under the civil
service commission and civil service system, and all matters
relating to job classification, job tenure, salary and
conditions of employment shall remain in force and effect
from and after the first day of July, one thousand nine
hundred eighty-five.

The chief of the division of forestry in the department of
natural resources on the effective date of transfer to the
department of agriculture shall continue as, and thereafter
be designated as, the state forester and retain civil service
system coverage with such duties and responsibilities as
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
drought, forest fire hazard or epizootic disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours' notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

(8) Supervise the fiscal affairs and responsibilities of the department;

(9) Designate such localities as he shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(10) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(11) Acquire for the state in the name of the 'department of natural resources' by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the department of natural resources, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and waters, which he deems suitable for the following purposes:

(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

(c) For public hunting, trapping or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter, and the rules and regulations issued hereunder;

(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or
waters suitable for the above purposes by exchange of other lands or waters under his supervision;
(f) For such other purposes as may be necessary to carry out the provisions of this chapter;
(12) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;
(13) Sell, with the approval in writing of the governor, timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks and those in the Kanawha state forest. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. When the appraised value of the timber to be sold is more than five hundred dollars, the director, before making sale thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise for bids. If the foregoing provisions of this section have been complied with, and no bid equal to or in excess of the appraised value of the timber is received, the director may, at any time, during a period of six months after the opening of the bids, sell the timber in such manner as he deems appropriate, but the sale price shall not be less than the appraised value of the timber advertised. No contract for sale of timber made pursuant to this section shall extend for a period of more than ten years. And all contracts heretofore entered into by the state for the sale of timber shall not be validated by this section if the same be otherwise invalid. The proceeds arising from the sale of the timber so sold, shall be paid to the treasurer of the state of West Virginia, and shall be credited to the department and used exclusively for the purposes of this chapter: Provided,
That nothing contained herein shall prohibit the sale of timber which otherwise would be removed from rights-of-way necessary for and strictly incidental to the extraction of minerals;

(14) Sell or lease, with the approval in writing of the governor, coal, oil, gas, sand, gravel and any other minerals that may be found in the lands under the jurisdiction and control of the director, except those lands that are designated as state parks. The director, before making sale or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which such lands are located. The minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give bond for the proper performance of the sales contract or lease as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise for bids. The proceeds arising from any such sale or lease shall be paid to the treasurer of the state of West Virginia and shall be credited to the department and used exclusively for the purposes of this chapter;

(15) Exercise the powers granted by this chapter for the protection of forests, and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(16) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;

(17) Report to the governor each year all information relative to the operation and functions of his department and he shall make such other reports and recommendations as may be required by the governor, including an annual financial report covering all receipts and disbursements of the department for each fiscal year, and he shall deliver such report to the governor on or before the first day of December next after the end of the fiscal year so covered. A copy of such report shall be delivered to each house of the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all
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
direction and supervision of the director and for whose acts he shall be responsible;

(28) Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state;

(29) Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the department in moving his household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months; and

(30) Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him by the provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter: Provided, That all rules and regulations relating to articles five and five-a of this chapter shall be promulgated by the water resources board.

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.

Divisions of game and fish, of forestry, of water resources, of law enforcement and of reclamation are hereby created and established within the department. Subject to provisions of law, the director shall allocate the functions and services of the department to the divisions, offices and activities thereof and may from time to time establish and abolish other divisions, offices and activities within the department in order to carry out fully and in an orderly manner the powers, duties and responsibilities of his office as director. The director shall select and designate a competent and qualified person to be chief of each division. The chief shall be the principal administrative officer of his division and shall be accountable and responsible for the orderly and efficient performance of the duties, functions and services thereof.

After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the water resources division of the department of natural resources should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the water resources division of the department of natural resources shall continue to exist until the first day of July, one thousand 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.]
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.

A person may not willfully obstruct or impede the
participation of any individual in the lawful activity of
hunting, fishing or trapping. Any person violating the
provisions of this section shall be guilty of a misdemea-
nor, and, upon conviction thereof, shall be fined not less
than one hundred dollars nor more than five hundred
dollars or imprisoned in the county jail for not less than
ten days nor more than one hundred days or both fined
and imprisoned. Also, any person convicted of a
subsequent violation of this section shall be fined not
more than one thousand dollars or imprisoned in the
county jail not more than one year or both fined and
imprisoned. For the purpose of this section a subsequent
violation is one which has occurred within two years of
any prior violation of this section and which arises out
of a separate set of circumstances. Any person convicted
of any violation of this section shall be liable to the
person, whom they interfered with, for all costs and
damages resulting therefrom and if such offender holds
a West Virginia hunting, fishing or trapping license at
the time of conviction, such license shall be revoked.

CHAPTER 126
(S. B. 119—By Senator Loehr)

[Passed March 8, 1986; in effect January 1, 1987. Approved by the Governor.]
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 license and shall entitle the licensee to hunt all game in all counties of the state, except when other licenses or permits are required. It shall be issued only to citizens of the United States and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are not residents of this state. The fee therefor shall be seventy dollars.

2 A Class EE license shall be a nonresident bear hunting license and shall entitle the licensee to hunt bear in all counties of the state on and after the first day of July, one thousand nine hundred eighty-two. It shall be issued only to citizens of the United States and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are not residents of this state. The fee therefor shall be one hundred twenty dollars.

3 A Class F license shall be a nonresident fishing license and shall entitle the licensee to fish for all fish, except trout, in all counties of the state. It shall be issued only to citizens of the United States and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are not residents of this state. The fee therefor shall be twenty dollars.

4 Trout fishing is not permitted with a Class F license unless such license has affixed thereto an appropriate trout stamp as prescribed by the department of natural resources.
A Class G license shall be a family fishing license and shall entitle the licensee and members of his family to fish within the territorial limits of state parks and state forests and in the waters of streams bounding same, for a distance of not to exceed one hundred yards from the exterior boundary of any state park or state forest, for a period not to exceed one week. It may be issued to any adult resident or nonresident who is temporarily residing in any state park or forest as tenant or lessee of the state. The fee therefor shall be six dollars for the head of the family, plus one dollar additional for each member of his family to whom the privilege of such license are extended. Class G licenses may be issued in such manner and under such regulations as the director may see fit to prescribe.

Trout fishing is not permitted with a Class G license unless such license has affixed thereto an appropriate trout stamp as prescribed by the department of natural resources. The trout stamp must be affixed to the license of the head of the family only.

A Class H license shall be a nonresident small game hunting license and shall entitle the licensee to hunt small game in all counties of the state for a period of six days beginning with the date it is issued. It shall be issued only to citizens of the United States who are not residents of this state. The fee therefor shall be ten dollars. As used in this section, “small game” means all game except bear, deer, wild turkey and wild boar.

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 license, and shall entitle the licensee to trap legal furbearing animals during the designated trapping season in those counties of the state as authorized by the director, except as prohibited by rules or regulations of the director.

2 A Class S license shall be issued only to a nonresident holding a valid Class E nonresident hunting license and who is a citizen of the United States or unnaturalized persons possessing the permit required by section twenty-nine of this article.

3 The fee for a Class S license shall be twenty-five 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.

(a) As used in this section:

(1) "Migratory waterfowl" means a wild goose, grant or wild duck.

(2) "Department" means the department of natural resources.

(3) "Stamp" means the migratory waterfowl conservation stamp provided by this section.

(b) Except as otherwise provided herein, no person may hunt or take any migratory waterfowl within this state without first procuring a migratory waterfowl conservation stamp as provided by this section. Such stamp must be in the possession of every person when hunting or taking any migratory waterfowl. Each stamp shall be validated by the signature of the licensee written across the face of such stamp. Such stamp shall expire annually on the same date each year that all hunting licenses expire. Any person who is exempt from payment or charge for a hunting license is also exempt from the fee imposed by this section. Any person who is under the age of sixteen years is exempt from the requirements of this section.

(c) A stamp shall be issued to each hunting license applicant upon request and payment of a fee of five dollars, together with any license agent fees imposed by this article.

(d) All fees collected from the sale of state migratory waterfowl stamps shall be appropriated to the department for the following purposes:
(1) Fifty percent for projects approved by the department for the purpose of attracting waterfowl and improving public migratory waterfowl areas within the state, but none of the moneys spent within the state may be used for administrative expenses; and

(2) Fifty percent will be expended by the department for the development of waterfowl propagation areas within the Dominion of Canada which specifically provide waterfowl for the Atlantic flyway. Before expending any funds under the provisions of this subsection, the department shall obtain evidence that the project is acceptable to the appropriate governmental agency of the Dominion of Canada or of one of its provinces having jurisdiction over the lands and waters affected by the project and shall consult those agencies before allocating funds. The department may enter into an agreement or agreements with an appropriate nonprofit organization or organizations to carry out the provisions of this subdivision.

(e) The department has exclusive production rights for the migratory waterfowl conservation stamp and is authorized to adopt a policy for the annual selection of an appropriate design for the stamp and to have the stamp produced for sale. The policy may include ownership rights of the original art selected and arrangements for the reproduction, distribution and marketing of the prints of the design of the stamp, for the disposition of the stamps after their year of issuance and for the lawful disposition of the resulting revenues. Such revenues shall be deposited in the state treasury and credited to the department and shall be used and paid out upon order of the director for the conservation of migratory waterfowl and other wildlife: Provided, That no moneys generated hereby shall be used for purposes for condemnation of any land in this state.

The 1987 migratory waterfowl conservation stamp shall be considered the only official "first of state" migratory waterfowl stamp issued for the state of West Virginia.
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-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-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
created the West Virginia wildlife endowment fund, the interest and principal of which shall be used only for the purpose of supporting wildlife conservation programs of the state in accordance with this section.

§20-2B-2. Board created; composition.

There is hereby created the board of trustees of the wildlife endowment fund of the department of natural resources, with full authority over the administration of the wildlife endowment fund, whose chairman shall be the director of the department of natural resources and whose members shall be the executive secretary of the department, the departmental fiscal officer, the chief of the wildlife resources division, and the chief of the law enforcement division and two citizen members, to be appointed by the Governor. The actual expenses of such citizen members, incurred in the performance of their duties hereunder, shall be payable from funds of the department. The state treasurer shall be the custodian of the wildlife endowment fund and shall invest its assets in accordance with the provisions of section nine, article six, chapter twelve of this code.


The assets of the wildlife endowment fund shall be derived from the following:

(a) The proceeds from the sale of lifetime hunting and fishing licenses under the provisions of section seven of this article; and

(b) The proceeds of any gifts, grants, contributions or other moneys accruing to the state which are specifically designated for inclusion in the fund.

§20-2B-4. Status of fund; expenditures from the fund.

The wildlife endowment fund is declared to constitute a special fund within the department, to be expendable only after legislative approval, with the following limitations and restrictions on expenditures from the funds:

(a) The income received and accruing from the investments of the wildlife endowment fund shall be
spent only in furthering the conservation and management of wildlife resources in the state;

(b) The income received and accruing from the investments of the wildlife endowment fund shall be distributed among divisions within the department as prescribed by section six of this article;

(c) No expenditure or disbursement shall be made from the principal of the wildlife endowment fund except at such time as the income received and accruing from the investments of the wildlife endowment fund is expended or disbursed for purposes other than the conservation and management of wildlife resources;

(d) Any disbursement of the principal of the wildlife endowment fund shall be made in the same manner as that prescribed for investment income in section six of this article; and

(e) Any expenditure or disbursement from the wildlife endowment fund must result in benefits to the department of natural resources and must be spent only for the conservation and management of wildlife resources.

§20-2B-5. Accumulation of investment income; how expenditures made; fund exclusive of other receipts and appropriations; dissolution of department.

(a) The board of trustees of the wildlife endowment fund may accumulate investment income of the fund within the fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget of the department of natural resources. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the fund to further the conservation of wildlife resources.

(b) Expenditure of the income derived from the wildlife endowment fund shall be made through the state budget accounts of the department of natural resources. The wildlife endowment fund is subject to the oversight of the state auditor.
(c) The wildlife endowment fund and the income derived therefrom shall not take the place of any other receipts or appropriations accruing to the department of natural resources, or any part thereof, but any portion of the income of the wildlife endowment fund shall be used to supplement other income of and appropriations to the department of natural resources to the end that the department may improve and increase its services to the people of the state and the conservation of their wildlife resources.

(d) In the event of the future dissolution of the department of natural resources, such state agency as shall succeed to its statutory authority to conserve the wildlife resources of the state shall, ex officio, assume the trusteeship of the wildlife endowment fund and shall be bound by all the limitations and restrictions placed by this section on expenditures from the fund. No appeal or modification of this section shall alter the fundamental purposes to which the wildlife endowment fund may be applied. No future dissolution of the department of natural resources shall invalidate any lifetime license issued in accordance with section seven of this article.


In accordance with the intent of sections thirty-four and forty-six-c, article two of this chapter and pursuant to sections three and four of this article, income accruing from the investments of the wildlife endowment fund shall be distributed in the following manner:

(a) Income accruing from the investment of moneys resulting from the sale of Class O-L license shall be distributed and disbursed in the same manner as revenues accruing from the sale of Class O licenses as provided for in section forty-six-c, article two of this chapter.

(b) Income accruing from the investment of any portion of the principal of the wildlife endowment fund which, at the time of its deposit into the fund, is specifically designated for the activities of a particular division within the department, shall accrue solely to
that division within the department; and
(c) All other income accruing from the investments of
the wildlife endowment fund shall be distributed within
the department in the same manner as provided for in
section thirty-four, article two of this chapter.

§20-2B-7. Lifetime hunting, fishing and trapping licenses
created.

Pursuant to section three of this article the following
lifetime hunting, trapping and fishing licenses are
hereby created and, for the lifetime of the licensee, shall
serve in lieu of the equivalent annual license;
(a) A Class AB-L lifetime resident combination
statewide hunting, fishing and trapping license, the fee
for which shall be three hundred dollars;
(b) A Class A-L lifetime resident statewide hunting
and trapping license, the fee for which shall be two
hundred dollars;
(c) A Class B-L lifetime resident statewide fishing
license, the fee for which shall be two hundred dollars;
and
(d) A Class O-L lifetime resident trout fishing license,
the fee for which shall be one hundred dollars.


Pursuant to section seven of this article, lifetime
licensees shall be entitled to the same privileges and
subject to the same restrictions as licensees possessing
the equivalent annual license with the following
exceptions:
(a) Class AB-L, A-L, B-L and O-L licenses shall be
valid for the lifetime of the licensee;
(b) A Class O-L lifetime resident trout fishing license
shall be issued only to residents of the state and shall
be valid only when accompanied by a Class AB-L, B-
L, AB or B license; and
(c) Class AB-L, A-L and B-L licenses shall include all
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 and established as successor to the state water commission and the state water resources commission is hereby abolished. A new state water resources board is hereby created and established as a public corporation. As such, the board may sue and be sued, plead and be impleaded, contract and be contracted with, and shall have and use a common seal.

(b) After having conducted a performance audit through its joint committee on government operations,
pursuant to section nine, article ten, chapter four of this
code, the Legislature hereby finds and declares that the
state water resources board should be continued and
reestablished. Accordingly, notwithstanding the provi-
sions of section four, article ten, chapter four of this code,
the state water resources board shall continue to exist
until the first day of July, one thousand nine hundred
ninety-two.

(c) The board shall be composed of five members who
shall be appointed by the governor with the advice and
consent of the Senate. Not more than three members of
the board shall be of the same political party. Individuals
appointed to the board shall be persons who by reasons
of previous training and experience are knowledgeable
in the husbandry of the state's water resources and with
at least one member with experience in industrial pollu-
tion control. No member of the board shall receive or,
during the two years next preceding the member of the
board's appointment, shall have received a "significant
portion of the member of the board's income" directly or
indirectly from a permit holder or an applicant for a
permit issued under any of the provisions of this chapter.
For the purposes of this subsection: (1) The term "sig-
nificant portion of the member of the board's income"
shall mean ten percent of gross personal income for a
calendar year, except that it shall mean fifty percent of
gross personal income for a calendar year if the recipient
is over sixty years of age and is receiving such portion
pursuant to retirement, a pension or similar arrange-
ment; (2) the term "income" includes retirement benefits,
consultant fees and stock dividends; (3) income is not
received "directly or indirectly" from "permit holders" or
"applicants for a permit" where it is derived from mutual-
fund payments or from other diversified investments
with respect to which the recipient does not know the
identity of the primary sources of income; and (4) the
terms "permit holders" and "applicants for a permit"
shall not include any university or college operated by
this state or political subdivision of this state.

(d) The members of the board shall be appointed for
overlapping terms of five years, except that the original
appointments shall be for terms of one, two, three, four
and five years, respectively. Any member whose term
expires may be reappointed by the governor. At its organ-
izational meeting, one member of the board shall be
selected chairman to serve as chairman at the will and
pleasure of the members of the board. Members of the
board shall, before performing any duty, take and sub-
scribe to the oath required by section five, article four
of the Constitution of West Virginia. Members of the
board may be removed only for the same causes and in
like manner as elective state officers. Any vacancy in the
office of a member of the board shall be filled by appoint-
ment by the governor for the unexpired term of the
member whose office shall be vacant. Each vacancy oc-
curring in the office of a member of the board shall be
filled by appointment within sixty days after such vacancy
occurs. Each member of the board shall be paid as com-
ensation for his work as such member from funds
appropriated for such purposes, seventy-five dollars per
day when actually engaged in the performance of work
as a board member. In addition to such compensation,
each member of the board shall be reimbursed for all
reasonable and necessary expenses actually incurred in
the performance of the board member’s duties. The
director of the division of sanitary engineering of the
state department of health shall perform such services as
the board and the chief of the division of water resources
may request in connection with the discharge of their
duties, and the director shall be reimbursed, out of
moneys appropriated for such purposes, all sums which
the director necessarily shall expend in the performance
of such service. Nothing contained in this article or in
article five-a of this chapter, however, shall be construed
to limit or interfere with the power of the state depart-
ment of health to select, employ and direct the director of
the division of sanitary engineering of said department,
or any employee thereof who in any way may perform
any services for the board or the division of water
resources. The college of engineering at West Virginia
University and the schools and departments of engineer-
ing at other institutions of higher education operated by this state, under the direction of the dean or other head thereof, shall, insofar as they can, without interfering with their usual and regular activities, aid and assist the board and the division of water resources in the study and research of questions connected with water pollution and the control and reduction thereof in accordance with the provisions of article five-a of this chapter. Such dean or other head shall be reimbursed, out of moneys appropriated for such purposes, all sums which such dean necessarily shall expend in the performance of any services such dean may render to the board and the division under the provisions hereof.

A majority of the board shall constitute a quorum for the transaction of business. The board shall meet at such times and places as it may determine and shall meet on call of the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of three members thereof. The board shall keep an accurate record of all of its proceedings and maintain such board records and make certificates thereof or therefrom as may be required by law. The board may employ a secretary 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.

The purpose of this article is to regulate in the public interest the use and application of pesticides. The Legislature finds that pesticides perform a vital function in modern society because they control insects, fungi, nematodes, rodents, and other pests which ravage and destroy our food and fiber, which serve as vectors of disease, and which otherwise constitute a nuisance in the environment or the home; they control weeds which compete in the production of foods and fiber and which otherwise are unwanted elements in our environment; and they regulate plant growth to enhance both the quality and quantity of our food and fiber and to facilitate its harvest. Pesticides, however, may be rendered ineffective, may cause injury to man or may cause unreasonable adverse effects on the environment if not properly used. They may injure man or animals either by direct poisoning or by the gradual accumulation of pesticide residues in their tissues. Crops or other plants may be affected by their improper use. The drifting or washing of pesticides into streams or lakes may cause appreciable damage to aquatic life. And, a pesticide applied for the purpose of killing pests in a crop, which is not itself injured by the pesticide, may drift and injure other crops or nontarget organisms with
which it comes in contact. Therefore, it is deemed necessary to provide for regulation of the use and application of such pesticides.

Nothing in this article shall be construed as permitting municipalities or counties to enact laws or ordinances regarding the regulation of pesticide use and application.

§19-16B-8. Licensed pesticide application business license.

(a) No person shall engage in the business of applying pesticides to the lands of another at any time without a licensed pesticide application business license issued by the commissioner. The commissioner shall require an annual fee of fifty dollars for each licensed pesticide application business license issued.

(b) Application for a licensed pesticide application business license shall be made in writing to the commissioner on forms approved or supplied by the commissioner. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications the applicant is applying for and shall include the following:

(1) The full name of the person applying for the license;

(2) If different than (1) the full name of the individual qualifying under subsection (c) of this section;

(3) If the applicant is a person other than an individual, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation or group;

(4) The principal business address of the applicant in the state and elsewhere;

(5) The address of each branch office or suboffice from which the business of applying pesticides is carried on. Each suboffice shall be licensed;

(6) Nonresidents applying for a licensed pesticide
application business license in any separate classification under this article to operate in this state shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicant, except that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the secretary of state as such agent. The commissioner shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state;

(7) The name and address of each certified commercial applicator applying pesticides or supervising the application of pesticides for the licensed pesticide application business;

(8) State tax number; and

(9) Any other necessary information prescribed by the commissioner.

(c) The commissioner shall not issue a licensed pesticide application business license until the owner, manager, partner or corporate officer is qualified by passing an examination to demonstrate to the commissioner his knowledge of the state and federal pesticide laws, safe use and storage of pesticides and the bases of the work to be done under the classification or classifications for which application for license is being made.

(d) If the commissioner finds the applicant qualified to apply pesticides in the classifications the applicant has applied for and if the applicant files the financial security required under section fifteen of this article, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the federal aviation agency, the aeronautics commission of this state, and any other
applicable federal or state laws or regulations to operate
the equipment described in the application, the commis-
sioner shall issue a licensed pesticide application
business license. The license so issued shall expire at the
end of the calendar year of issue, unless it has been
revoked or suspended prior thereto by the commissioner
for cause, except when the financial security required
under section fifteen of this article is dated to expire at
an earlier date, in which case said license shall be dated
to expire upon expiration date of said financial security.
The commissioner may limit the license of the applicant
to certain classifications of pest control work, or to
certain areas, or to certain types of equipment, or to
certain specific pesticides, if the applicant is only so
qualified. If a license is not issued as applied for, the
commissioner shall inform the applicant in writing of
the reasons therefor.

(e) All persons applying pesticides as a licensed
pesticide application business, whether or not they are
applying restricted use pesticides, must be certified as
a commercial applicator in the appropriate category or
subcategory, or must be under the direct supervision of
a certified commercial applicator.

§19-16B-12. License renewals.

Any person holding a current valid license, permit or
certification may renew such license, permit or certifi-
cation for the next year without taking another exam-
ination, except as is provided in subsection (d), section
eight, unless the license, permit or certification is not
renewed by the first day of April of any year in which
such licensee, permittee or certificate holder shall
be required to take another examination: Provided, That
no person holding an expired license, permit or certi-
fication shall engage in any activity for which such
license, permit or certification is required until such
license, permit or certification has been renewed.

§19-16B-14. Denial, suspension or revocation of license,
permit or certification; civil penalty.

The commissioner shall notify any licensee of viola-
tions of this article by the licensee, and after inquiry,
including opportunity for a hearing, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under this article or he may impose a civil penalty as provided in section twenty-two of this article, if he finds that the applicant or the holder of a license, permit or certification has committed any of the following acts, each of which is declared to be a violation of this article:

(1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;

(2) Made a pesticide use recommendation or application inconsistent with the labeling as registered by the United States environmental protection agency or commissioners' state registration for that pesticide, or in violation of the United States environmental protection agency or commissioners' state restrictions for the use of that pesticide;

(3) Applied unknown ineffective or improper pesticides;

(4) Operated faulty or unsafe equipment;

(5) Operated in a faulty, careless or negligent manner;

(6) Neglected or, after notice, refused to comply with the provisions of this article, the rules adopted hereunder, or of any lawful order of the commissioner;

(7) Refused or neglected to keep and maintain the records required by this article, or to make reports when and as required;

(8) Made false or fraudulent records, invoices or reports;

(9) Engaged in the business of applying a pesticide on the lands of another without having a licensed pesticide application business license;

(10) Engaged in the business of applying a restricted use pesticide on the lands of another without having a licensed certified applicator in direct supervision;
(11) Used fraud or misrepresentation in making an application for, or renewal of, a license, permit or certification;

(12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit or certification;

(13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this article or allowed one's license, permit or certification to be used by another person;

(14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;

(15) Impersonated any federal, state, county or city inspector or official;

(16) Advertised as proof of professionalism in securing business that the licensee is certified or licensed by the department of agriculture or the commissioner of agriculture; or

(17) Failed to comply with any provision of this article or any regulation issued thereunder.


(a) Any person violating any provisions of this article or regulations adopted hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for the second offense, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Magistrates shall have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) No state court shall allow the recovery of damages for administrative action taken if the court finds that there was probable cause for such action.

(c) In addition to proceeding under any other remedy
available at law or in equity for a violation of a provision of this act or a rule or regulation adopted thereunder, or any order issued pursuant to, the commissioner may, after hearing, assess a civil penalty not to exceed five hundred dollars upon a person other than a private applicator for such violation. The civil penalty shall be payable to the state of West Virginia and shall be collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay such civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, shall be a lien in favor of the state of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where such property is situated. The county clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to such recording.

(d) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt regulations which permit consent agreements or negotiated settlements for the civil penalties assessed as a 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 of substantially similar amendments to the interstate compact by each of the signatory states to the compact, and upon the approval of the amendments to the compact by the Congress of the United States.

2 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that West Virginia should remain a member of the interstate compact. Accordingly, notwithstanding the provisions of sections four and six, article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, one thousand nine hundred 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.

A person last seen at any site within the area proclaimed by the governor on the fifth day of November, one thousand nine hundred eighty-five, to be in a state of emergency as a result of the flooding in this state on or about the fourth day of November, one thousand nine hundred eighty-five, whose body has not been found or identified within six months of the date last seen at such site, and who is unheard of by those who, had he been alive, would naturally have heard of him, and whose disappearance can reasonably be believed to have been caused by such flooding shall in any case where his death shall come in question be presumed in law to be dead, in the absence of proof to the contrary or unless proof be made that he was alive within that time.

§44-9-6. Order declaring presumption established; probate of will; letters testamentary or of administration; their effect; death certificate issued upon order.

If the commission is satisfied, upon the hearing or from the report of the fiduciary commissioner, that the legal presumption of death is established, the commission shall so declare by order, shall then proceed to hear, and to grant, if proper, the application for probate of the will of such supposed decedent, if such there be, and to grant letters testamentary or of administration, as the case may require, to the party entitled thereto, who shall qualify and give bonds as in cases of persons known to 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
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.

A licensed dentist shall have the same rights to prescribe or administer drugs or medicines, perform such surgical operations, administer local anesthetics and use such appliances as may be necessary to the proper treatment of the special class of diseases mentioned in this article as are enjoyed by registered physicians in this state. A licensed dentist may administer general anesthesia and parenteral conscious sedation in accordance with the provisions of article four-a of this chapter. A licensed dentist shall have the same right to execute and sign a death certificate when such is required in the course of his practice as is given to licensed physicians by the laws of this state. Pharmacists of this state shall fill prescriptions of licensed dentists in this 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-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-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-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.

The Legislature hereby finds and declares that dentists are increasingly administering general anesthesia and parenteral conscious sedation in their offices on an outpatient basis; that the administration of general anesthesia and parenteral conscious sedation carries with it an inherent risk and danger to the patient; that, however, the administration of general anesthesia and parenteral conscious sedation on an out-patient basis by dentists is necessary and for the good of the public; but that because of the inherent dangers in the administration of general anesthesia and parenteral conscious sedation, it is necessary to ensure that the persons administering and supervising such general anesthesia or parenteral conscious sedation are competent and trained in the techniques; that it is in the best interests of the public and the dentists of West Virginia to prohibit dentists from administering or supervising the administration of general anesthesia or parenteral conscious sedation unless those dentists meet certain minimal training and competency standards in the administration and supervision of general anesthesia or parenteral conscious sedation; and that requiring a dentist to obtain a special permit before he or she can administer or supervise general anesthesia or parenteral conscious sedation is the best method to preserve the use of general anesthesia and parenteral conscious sedation by dentists on out-patients and, at the same time, ensure that such administration and supervision is performed by competent dentists trained in the use of such techniques.
§30-4A-2. Definitions.

1 (a) The scope of practice of a licensed "dentist" is defined in section two, article four of this chapter.
2 (b) "General anesthesia" means a controlled state of unconsciousness produced by any drug or pharmacologic agent accompanied by a partial or complete loss of protective reflexes, including the inability to independently maintain an airway and respond purposefully to physical stimulation of verbal commands.
3 (c) "Nitrous oxide - oxygen analgesia" refers to the administration by inhalation of a combination of nitrous oxide and oxygen gas which produces an altered level of consciousness without the loss of the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal commands.
4 (d) "Parenteral conscious sedation" means a depressed state of consciousness produced by the injection of pharmacologic substances that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal commands.
5 (e) "State of consciousness" refers to a patient being fully capable of rational response to verbal commands, with all protective reflexes intact, and including the ability to 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 administration of general anesthesia and parenteral conscious sedation for dental patients unless such dentist possesses a permit of authorization from the West Virginia board of dental examiners: Provided, That no such permit shall be required for the administration of general anesthesia or parenteral conscious sedation by a dentist in a 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
parenteral conscious sedation, a dentist shall:

(a) Be a dentist licensed by the West Virginia board of dental examiners, hereinafter sometimes referred to as the “board,” or as “board of dental examiners” and registered to practice dentistry in the state of West Virginia;

(b) Apply to the West Virginia board of dental examiners on an application form prescribed by the board;

(c) Include with the application an application fee in the amount of three hundred dollars;

(d) Have a properly equipped facility for the administration of general anesthesia, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto as outlined in the office anesthesia evaluation manual as adopted and amended by the board of dental examiners;

(e) In the case of any dentist who treats children who applies for any permit under this section, such dentist must document his or her competency to administer general anesthesia and parenteral conscious sedation to children by demonstrating to the satisfaction of the board his or her familiarity with the “Guidelines for the elective use of conscious sedation, deep sedation and general anesthesia in pediatric patients” of American Academy of Pediatrics and the American Academy of Pediatric Dentistry; and

(f) Produce evidence showing at least one of the following:

(1) He or she has completed a minimum of one year of advanced training in an approved anesthesia residency;

(2) He or she is a diplomate of the American board of oral and maxillofacial surgery;

(3) He or she is eligible for an examination by the American board of oral and maxillofacial surgery (ABOMS);

(4) He or she is a fellow of the American association of oral and maxillofacial surgery (AAOMS);

(5) He or she has successfully completed an American dental association accredited oral and maxillofacial surgery program as evidenced by a letter from the program director stating that said applicant is qualified to perform such anesthesia techniques;

(6) He or she is a fellow of the American dental society of
anesthesiology; or
(7) He or she employs or works in conjunction with a licensed and trained doctor of medicine or osteopathic physician who is a member of the anesthesiology staff of a hospital licensed by the state of West Virginia, provided such anesthesiologist personally supervises or administers said general anesthesia and remains on the premises of the dental facility until any patient given a general anesthetic or parenteral conscious sedation regains consciousness.

§30-4A-5. Eligibility requirements for permit to administer parenteral conscious sedation only.

To receive a permit for use of parenteral conscious sedation only, the dentist shall:

(a) Be a dentist licensed by the West Virginia board of dental examiners and registered to practice dentistry in the state of West Virginia;

(b) Apply to the West Virginia board of dental examiners on an application form prescribed by the board for the use of parenteral conscious sedation only;

(c) Include with the application a fee in the amount of three hundred dollars;

(d) Maintain a properly equipped facility for the administration of parenteral conscious sedation, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto as outlined in the office anesthesia evaluation manual specified in section four of this article;

(e) In the case of any dentist who treats children who applies for any permit under this section, such dentist must document his or her competency to administer parenteral conscious sedation to children by demonstrating to the satisfaction of the board his or her familiarity with the “Guidelines for the elective use of conscious sedation, deep sedation and general anesthesia in pediatric patients” of the American Academy of Pediatrics and the American Academy of Pediatric Dentistry; and

(f) Produce evidence showing at least one of the following:

(1) He or she meets at least one of the criteria described in subdivisions (1) through (7), subsection (e), section four
of this article;

(2) He or she has satisfactorily completed at least one year of post-doctoral dental training in a dental residency or speciality program approved by the American dental association or the American medical association which must include didactic studies and practical experience in the administration of general anesthesia and parenteral conscious sedation. A letter from the chief of the approved residency program verifying that said dentist has satisfactorily completed said training and is competent to administer parenteral conscious sedation may be deemed acceptable evidence thereof; or

(3) He or she has satisfactorily completed a continuing education course or program regarding the administration of parenteral conscious sedation which meets or exceeds the American dental association council on dental education's current "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry."


The administration of nitrous oxide - oxygen inhalation analgesia shall not require a special permit for use by a licensed dentist. However, a licensed dentist rendering such treatment to their patients shall have a properly equipped facility for the administration of nitrous oxide-oxygen inhalation analgesia. The dentist and their office personnel shall have instruction in the administration of cardia life support. The nitrous oxide-oxygen inhalation equipment shall have fail-safe features and a minimum twenty-five 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.

By making application to the board of dental examiners for a general anesthesia or parenteral conscious sedation permit, said dentist consents and authorizes the board of dental examiners to review his or her credentials, inspect or reinspect his or her facilities, and investigate any alleged anesthesia mortalities, misadventures, or other adverse occurrences which the board feels is justified in the best interest of the public and the board. The board of dental
9 examiners shall have the authority and right to conduct an
in-office review or on-site inspection of any dentist
applying for or holding a permit to administer general
anesthesia or parenteral conscious sedation at any time the
board deems necessary.

§30-4A-8. Appointment of subcommittee by the West Virginia
board of dental examiners; credentials review;
and on-site inspections.

The West Virginia board of dental examiners shall
appoint a five member subcommittee to carry out the
review and on-site inspection of any dentist applying for or
renewing a permit under this article. The subcommittee
shall also make a recommendation for issuing or revoking a
permit under this article. This subcommittee shall be
known as the "West Virginia Board of Dental Examiners
Subcommittee on General Anesthesia and Parenteral
Conscious Sedation," hereinafter referred to as the
"subcommittee." The subcommittee shall consist of one
member of the board of dental examiners who shall act as
chairman of the subcommittee, one diplomate of the
American board of oral and maxillofacial surgery; one
fellow of the American dental society of anesthesiology or
fellow of the American association of oral and maxillofacial
surgery; one general dental practitioner engaged in
providing out-patient general anesthesia or parenteral
conscious sedation services; and one dental practitioner
specializing in pediatric dentistry. Four members of the
subcommittee must be practitioners possessing a current
general anesthesia or parenteral conscious sedation permit.
During the first year of the existence of the subcommittee,
the four members of the subcommittee shall possess
qualifications as described herein for a temporary
provisional permit. No subcommittee member shall serve
longer than a four-year term. Initial members of the
subcommittee may be appointed to longer or shorter terms
at the discretion of the board of dental examiners so that the
terms may be staggered and the subcommittee may
maintain experienced and qualified members at all times.

§30-4A-9. On-site inspection by West Virginia board of dental
examiners.

Prior to issuing a permit, the board of dental examiners
has the right to conduct an on-site inspection of facility, equipment, and auxiliary personnel of the applicant to determine if, in fact, all the requirements for such permit have been met. This inspection or evaluation, if required, shall be carried out by at least two members of the subcommittee directly appointed by the board of dental examiners as prescribed in section eight of this article. This evaluation is to be carried out in a manner following the principles, but not necessarily the procedures, set forth by the current edition of the office anesthesia evaluation manual of the West Virginia board of dental examiners. On-site inspections are required and shall be performed for all initial applicants. Thereafter, the board may reinspect annually, at its discretion, but must perform an on-site inspection for all permit holders at least once every five years. The board reserves the right to conduct an on-site inspection whenever it deems necessary. However, all on-site inspections shall be held during regular business hours and with at least forty-eight hours’ notification.

§30-4A-10. Immunity from liability.

(a) Notwithstanding any other provision of law, no person providing information to the board of dental examiners or to the subcommittee may be held, by reason of having provided such information, to be civilly liable under any law unless such information was false and the person providing such information knew or had reason to believe that such information was false.

(b) No member or employee of the board of dental examiners or the subcommittee may be held by reason of the performance by him or her of any duty, function or activity authorized or required of the board or the subcommittee to be civilly liable. The foregoing provisions of this subsection shall not apply with respect to any action taken by any individual if such individual, in taking such action, was motivated by malice toward any person affected by such 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.

Within ninety days following the effective date of this
article, all dentists currently administering or supervising
general anesthesia or parenteral conscious sedation and
desiring to continue such practice shall make application to
the board of dental examiners for the issuance of an
immediate temporary provisional permit. This temporary
provisional permit shall be valid for up to a maximum of
one year. This temporary provisional permit will only be
valid until the board is able to conduct a thorough review of
the applicant’s credentials and an on-site evaluation of the
dentist’s facilities, equipment, techniques, and personnel as
described herein, but in no event will the permit be valid for
more than one year. Failure to apply within ninety days
shall cause the board to consider the currently practicing
dentist as a new applicant.

§30-4A-12. Revocation of temporary provisional permits.

Failure of the dentist to meet the minimal credentials or
failure to pass the on-site inspection or evaluation
prescribed in this article may result in the immediate
revocation of the temporary provisional permit. A dentist
who has had a temporary provisional permit revoked shall
be required to wait thirty days from the date of revocation
prior to reapplying for another permit as described in
section fifteen of this article.


On the effective date of this article and from that date
forward, any dentist not previously administering or
supervising general anesthesia or parenteral conscious
sedation techniques but wishing to do so, shall make
application to the board as prescribed herein. The board
and the subcommittee shall then review the applicant’s
credentials and further will require an on-site evaluation of
the dentist’s facilities, equipment, techniques, and
personnel prior to issuing a regular annual permit. After the
initial on-site inspection, the board, at its discretion, will
conduct further on-site evaluations as described in section
nine of this article.


Upon the recommendations of the subcommittee to the
board of dental examiners, the board shall issue regular
permits to applicable dentists. A general anesthesia or parenteral conscious sedation permit must be renewed annually as described in section sixteen of this article.

§30-4A-15. Waiting period for reapplication or reinspection of facilities.

A dentist whose application has been denied for failure to satisfy the requirements in the application procedure or the on-site evaluation must wait thirty days from the date of such denial prior to reapplying and must submit to another on-site evaluation prior to receiving a regular annual permit. It is the responsibility of the board and the subcommittee to promptly reinspect the applicant dentist’s facilities, techniques, equipment, and personnel within ninety days after said applicant has made reapplication.

§30-4A-16. Annual renewal of regular permits; fees.

The board of dental examiners shall require an application for annual renewal of a previously issued general anesthesia or parenteral conscious sedation permit and will require a renewal fee of one hundred dollars. The board shall renew permits for the use of general anesthesia or parenteral conscious sedation after receiving the renewal fee, unless the permit holder has been informed in writing within sixty days prior to such renewal date that a reevaluation of his or her credentials is required. In determining whether such reevaluation is necessary, the board may consider such factors as it deems appropriate, including, but not limited to, patient, dentist or physician complaints and reports of adverse occurrences or misadventures. Reevaluation may also include a yearly on-site inspection of the facility, equipment, personnel, licentiate and procedures utilized by the holder of such permit. However, an on-site inspection of the facility, equipment, personnel, licentiate and procedures utilized by the holder of such a permit will be required for all permit holders within a five-year period from the permit holder’s last on-site inspection.

§30-4A-17. Violations of article; penalties for practicing general anesthesia or parenteral conscious sedation without a permit.

Violations of any of the provisions of this article, whether
intentional or unintentional, may result in the revocation or suspension of the dentist’s permit to administer general anesthesia or parenteral conscious sedation; multiple or repeated violations or gross infractions, such as practicing general anesthesia or parenteral conscious sedation without a valid permit may result in suspension of the dentist’s license to practice dentistry for up to one year as well as other disciplinary measures as deemed appropriate 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.

The board shall have the right, in accordance with rules and regulations promulgated under the provisions of article three, chapter twenty-nine-a of this code, to refuse to admit an applicant for the licensure examination for the hereinafter stated reasons, and also the board shall have the power to revoke or suspend any license to practice practical nursing issued by the board in accordance with the provisions of this article, or to
otherwise discipline a licensee upon satisfactory proof that the person: (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing; or (2) is convicted of a felony; or (3) is habitually intemperate or is addicted to the use of habit-forming drugs; or (4) is mentally incompetent; or (5) is guilty of professional misconduct as defined by the board; or (6) who practices or attempts to practice without a license or who willfully or repeatedly violates 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
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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 created, shall continue in existence but on and after the effective date of this article shall be known and designated as "The West Virginia board of veterinary medicine," and shall consist of five members, not more than three of whom shall belong to the same political party to be appointed by the governor with the advice and consent of the Senate. The three members of the board in office on the effective date of this article shall, unless sooner removed, continue to serve until their terms expire and until their successors have been appointed and have qualified. On or before July one, one thousand nine hundred sixty-seven, the governor shall appoint one member to serve until June thirty, one thousand nine hundred sixty-eight, and one member to serve until June thirty, one thousand nine hundred seventy, or until their successors have been appointed and have qualified. As the terms of the three members of the board in office on the effective date of this article expire and as the terms of the two members to be appointed by the governor on or before July one, one thousand nine hundred sixty-seven, expire, members shall be appointed for overlapping terms of five years, so that one term expires each year, or until their successors have been appointed and have qualified. Any vacancy in the office of a member of the board shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant. No person shall be appointed to two consecutive full terms, but a person appointed for a term of less than five years may be appointed to succeed himself. The governor may remove any member of the board for neglect of duty or other sufficient cause.

34 No person shall be appointed to the board unless he be a graduate of a veterinary school and a resident of this state, and unless he shall have been licensed to
practice veterinary medicine in this state for at least three years immediately preceding his appointment.

As compensation for his services on the board, each member shall receive, out of the moneys collected hereunder, a sum not to exceed one hundred dollars for each day or substantial portion thereof that he is engaged in the work of the board. Each member shall also be entitled to be reimbursed, out of the moneys collected hereunder, for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the board.

The board shall meet at least once each year, the time and place of such meeting to be fixed by the board, and at such annual meeting shall elect from its membership a president, a secretary-treasurer and such other officers as may be desired. Other meetings of the board may be called by the president on such notice to the other members as may be prescribed by the board. A majority of the board shall constitute a quorum for the transaction of the business of the board. All meetings of the board shall be open and public, except that the board may meet in closed session to prepare, approve, administer, or grade examinations, to deliberate decisions to be reached on disciplinary proceedings, or to review the qualifications of an applicant for a license.

It shall be the duty of the secretary-treasurer to carry on the correspondence of the board, keep permanent accounts and records of all receipts and disbursements by the board and of all board proceedings, including the disposition of all applications for license, and keep a register of all persons currently licensed by the board. All board records, except as otherwise provided by law, shall be open to public inspection during regular office hours. The secretary-treasurer shall furnish to the board a fidelity surety bond in such sum and conditioned as the board may require, the cost of such bond to be paid by the board out of the moneys collected hereunder.

As soon as possible after the close of each fiscal year, the president and secretary-treasurer shall submit to the governor a report on the transactions of the board,
including an accounting of all moneys received and disbursed.

All moneys received by the board shall be accepted by the secretary-treasurer and deposited by him with the treasurer of the state and credited by the treasurer to an account to be known as the "board of veterinary medicine fund." All expenses of the board shall be paid from such fund by voucher signed by the secretary-treasurer of the board, and no part of the state's general revenue fund shall be expended for this purpose.

§30-10-7. Examinations; issuance or denial of license authorization of veterinary medical corporations; assistants; fee.

The board shall hold at least one examination during each year and may hold such additional examinations as are necessary. The secretary-treasurer shall give public notice of the time and place of each examination at least one hundred twenty days in advance of the date set for such examination. A person desiring to take an examination shall make application for a license to the board.

Procedures concerning the preparation, administration and grading of examinations shall be prescribed by the board. Examinations shall be designed to test the examinee's knowledge of and proficiency in the subjects and techniques commonly taught in veterinary schools. To pass the examination, the examinee must demonstrate scientific and practical knowledge sufficient to prove himself a competent person to practice veterinary medicine in the judgment of the board. All examinees shall be tested by a written examination, supplemented by such oral interviews and practical demonstrations as the board may deem necessary. The board may adopt and use the examination prepared by the national board of veterinary examiners.

The secretary-treasurer shall notify each examinee of the result of his examination within forty-five days thereafter, and the board shall issue a license to each person who passes the examination. The application for a license by any person failing an examination shall be
denied, but such person shall be admitted to any subsequent examination upon payment of another application fee.

The board shall also examine the application of any one or more veterinarians for the formation of a veterinary medical corporation, filed pursuant to the provisions of section eighteen of this article, and issue a certificate of authorization therefor to any applicant or applicants legally entitled to receive the same. The board shall also have authority to authorize veterinary medical corporations, in accordance with the provisions of sections eighteen and nineteen of this article to practice veterinary medicine and surgery through duly licensed veterinarians.

The board shall have the power to certify and establish standards for employment of assistants to veterinarians.

No license shall be issued under the provisions of this section until the person applying therefor shall have paid to the board a fee of five dollars.

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 of land surveyors which shall be composed of three members appointed by the governor by and with the advice and consent of the Senate. Each member shall have been actively engaged in the practice of land surveying for at least ten years and shall be the holder of a license under the provisions of this article.

(b) The members of the board shall be appointed for overlapping terms of three years each ending on the thirtieth day of June, and until their respective successors have been appointed and qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section five, article four of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The board shall elect from its membership a chairman and secretary-treasurer. A majority of the members of the board shall constitute a quorum and meetings shall be held at the call of the chairman or upon
the written request of two members at such time and place as designated in such call or request, and, in any event, the board shall meet at least once annually to conduct the examination hereinafter provided for and to transact such other business as may come before it.

(d) Members shall be paid such reasonable compensation as the board may from time to time determine, and in addition may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties, which compensation and expenses shall be paid in accordance with the provisions of subsection (b), section four of this article.

(e) The board shall be terminated pursuant to the provisions of article ten, chapter four of this code on the first day of July, one thousand nine hundred ninety-two, unless sooner terminated or unless continued or reestablished pursuant to this article and chapter.

§30-13A-5. Qualifications of applicants for licenses; exceptions; applications; fees; examinations.

(a) To be eligible for a license to engage in the practice of land surveying, the applicant must:

1. Be at least eighteen years of age;
2. Be of good moral character;
3. Have been a resident of the United States for one year immediately preceding the date of application;
4. Not have been convicted of a crime involving moral turpitude;
5. Have four years or more experience in the practice of land surveying under the supervision of a licensee, or a person authorized in another state or country to engage in the practice of land surveying; and each year of satisfactory study in an accredited surveying curriculum may be substituted for one year of experience, but only two years of such experience requirement may be fulfilled by such study; and
6. Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of land surveying and land surveying skills and techniques.

(b) The following persons shall be eligible for a license
to engage in the practice of land surveying without
examination:
(1) Any applicant who is licensed, certificated or
registered to engage in the practice of land surveying in any
other state or country, if the requirements to obtain a
license or certificate or to become registered in such other
state or country are found by the board to be at least as great
as those prescribed in this article;
(2) Any applicant who is a graduate of an accredited
surveying curriculum and has at least two years of
experience in the practice of land surveying under the
supervision of a licensee, or a person eligible for a license
hereunder, or a person authorized in another state or
country to engage in the practice of land surveying, if such
applicant meets the requirements of subdivisions (1), (2), (3)
and (4), subsection (a) of this section; and
(3) Any applicant who has been engaged in the practice
of land surveying in West Virginia for at least six years prior
to the filing of such application, if such application for a
license is made within three years after the effective date of
this article and if such person meets the requirements of
subdivisions (1), (2), (3) and (4), subsection (a) of this
section. Such applicant must also furnish the names and
addresses of ten persons who have engaged such applicant
as a land surveyor, together with satisfactory records of
such land surveying work.
(c) Any applicant for any such license shall submit an
application therefor on forms provided by the board. Such
application shall be verified and shall contain a statement
of the applicant's education and experience, the names of
five persons for reference (at least three of whom shall be
licensees, or persons eligible for a license hereunder, or
persons authorized in another state or country to engage in
the practice of land surveying, who have knowledge of his
work) and such other information as the board may from
time to time by reasonable rule and regulation prescribe.
(d) An applicant shall pay to the board with his
application a license fee of seventy dollars.
(e) Examinations shall be held at least once each year at
such time and place as the board shall determine. The scope
of the examination and methods of procedure shall be
determined by the board. An applicant who fails to pass an
examination may reapply at any time and shall furnish additional information as requested by the board. Each such application shall be accompanied by a license fee of thirty dollars.

(f) A licensee who obtained his license under the provisions of subdivisions (2) and (3), subsection (b) of this section may, in addition, apply for licensing under the provisions of subsection (a) of this section, if such licensee pays the fee otherwise required to be paid by other applicants and if such licensee meets the qualifications of subsection (a). Any applicant may apply for a separate license under subsection (a), or subdivisions (2) or (3), subsection (b) of this section upon the payment of the required fee for each license, and he may receive a license for each subsection for which such person makes application and is qualified. If any person fails to qualify for a license under any subsection of this section, such failure to qualify shall not prevent such person's licensure under any other subsection of this section for which such person is otherwise qualified.

§30-13A-6. Issuance of license; notice of expiration; renewal; renewal fee; display.

Whenever the board finds that an applicant meets all of the requirements of this article for a license to engage in the practice of land surveying, it shall forthwith issue to him such license; and otherwise the board shall deny the same. All licenses, whether original or renewal, shall expire on the thirtieth day of June following the date of issuance or renewal. The secretary-treasurer of the board shall mail to every licensee, at least thirty days prior to the expiration of such license, notice of the expiration date and the amount of the renewal fee. A license may be renewed without examination upon application for a renewal on a form prescribed by the board and payment to the board of an annual renewal fee of thirty dollars. If a license is not renewed when due, the fee shall increase one dollar per month for each month or fraction thereof that such renewal fee is not paid, up to a maximum of thirty-six months. No license shall be renewed after expiration of said period of thirty-six months, and the fact that a license cannot be renewed because of the expiration of said period of thirty-
six months shall not prevent such person from making
application for a new license. The board may deny any
application for renewal for any reason which would justify
the denial of an original application for a license. The board
shall prescribe the form of licenses and each such license
shall be conspicuously displayed by the licensee at his
principal place of practice. A duplicate license may be
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; qualifica-
tions, 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 counsel-
ing; 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.

The Legislature hereby finds that in the public interest, persons should not engage in the practice of counseling or therapy in this state without the requisite experience and training; and that there is presently no adequate means to protect the interests of the citizens of this state from the unauthorized, unqualified and unprofessional practice of counseling. It is therefore declared to be the public policy of this state that the practice of counseling affects the general welfare and public interest of the state and its citizens; that persons without the necessary qualifications, training, education, experience and persons not of good character should not engage in the practice of counseling; that the unauthorized, unqualified and unprofessional practice of counseling may be best prevented, and the interest of the public best served, by regulating and controlling such practice as provided in this article; and that this article should be liberally construed to effect such objects and purposes.

§30-31-2. Definitions.

As used in this article:
(1) "Applicant" means any person making an application for an original or renewal license under the provisions of this article;

(2) "Board" means the West Virginia board of examiners in counseling established by this article;

(3) "Counseling" means rendering, offering to render or supervising those who render any service for compensation or other personal gain involving the application of mental health counseling procedures to help in learning how to solve problems or make decisions related to careers, personal growth, marriage, family or other interpersonal or intrapersonal concerns;

(4) "Counselor" means one who holds himself or herself out to the public as engaged in the practice of counseling as defined herein, and, in so doing, represents that he or she has the knowledge, training, expertise and ethical standards necessary to engage in such practice;

(5) "Licensed professional counselor" means a counselor as defined herein who holds a valid license to practice counseling issued pursuant to this article; and

(6) "Mental health counseling procedures" include, but are not restricted to, the use of methods and techniques which contribute to self-understanding, desired personal behavior change or more effective interpersonal behavior; assessment techniques useful in appraising aptitudes, abilities, achievements, interest or attitudes; informational and community resources for career, personal or social development; individual and group techniques which facilitate problem-solving behavior or decision making; and supervision, referral and placement techniques and methods which serve to further the goals of counseling.

§30-31-3. Activities exempted; persons exempted from licensing; limitations on licensed professional counselors.

(a) Nothing in this article applies to the following activities:
(1) Teaching, lecturing or engaging in research in counseling so long as such activities do not otherwise involve the practice of counseling directly affecting the welfare of the person counseled;

(2) The official duties of persons employed as counselors by the state of West Virginia, any of its departments, agencies, divisions, bureaus, political subdivisions, counties, county boards of education, regional education service agencies, municipalities or any other facilities or programs established, supported or funded, in whole or in part, by any such governmental entity;

(3) The official duties of persons employed as counselors by any department, agency, division or bureau of the United States of America;

(4) The official duties of persons serving as counselors, whether as volunteers or for compensation or other personal gain, in any public or private nonprofit corporations, organizations, associations or charities;

(5) The official duties of persons who are employed by a licensed professional counselor, whose duties are supervised by a licensed professional counselor and who represent themselves by a title such as “counselor trainee,” “counselor intern,” “counselor assistant” or other reasonable facsimile of such title, and do not represent themselves as licensed professional counselors as defined by section two of this article;

(6) The activities of a student of counseling which are part of the prescribed course of study at an accredited educational institution and are supervised by a licensed professional counselor or by a teacher, instructor or professor of counseling acting within the official duties or scope of activities exempted by this section; or

(7) The activities and services of qualified members of other recognized professions such as physicians, psychologists, psychoanalysts, social workers, lawyers, nurses, teachers and clergymen performing counseling consistent with the laws of this state, their training and any code of ethics of their professions so long as such persons do not represent themselves as licensed profes-
42 professional counselors as defined by section two of this article.
43
44 (b) Nothing in the article requires licensing of the following persons pursuant to this article:
45
46 (1) A school counselor who holds a school counseling certificate issued by the West Virginia department of education and who is engaged in counseling solely within the scope of his or her employment with such department, a county board of education or a regional education service agency; or
47
48 (2) A nonresident counselor who holds a license or certificate to engage in the practice of counseling issued by another state, the qualifications for which in the opinion of the board are at least as stringent as those provided in section seven of this article, and who renders counseling services in this state for no more than thirty days in any calendar year.
49
50 (c) Nothing in this article permits licensed professional counselors to administer or prescribe drugs or otherwise engage in the practice of medicine as defined 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 examiners in counseling, consisting of seven members who shall be appointed by the governor by and with the advice and consent of the Senate, subject to the following provisions:

2 (1) The board shall be composed of two counselor educators engaged in the teaching of counseling at an accredited institution of higher education, three practicing counselors and two persons chosen from the general public. The five members of the board who are counselor educators and practicing counselors must be licensed pursuant to this article and have a minimum of three years of experience except for the initial appointees who must meet the qualifications provided in subdivision (2) of this subsection.

3 (2) The initial appointees who are practicing counse-
lors must be persons who have been rendering counseling services for at least three years. The initial appointees who are counselor educators must be persons who have been teaching counseling at an accredited institution of higher education for at least three years. Each initial appointee shall commence serving a term on the board on the first day of July, one thousand nine hundred eighty-six. One initial appointee who is a practicing counselor and one initial appointee who is chosen from the general public shall serve terms of one year; one initial appointee who is a practicing counselor and one initial appointee who is a counselor educator shall serve terms of two years; and the remaining initial appointees shall serve terms of three years. Each subsequent appointee shall commence serving a term of five years on the board beginning on the first day of July in the year of his or her appointment. No board member may serve more than two consecutive full five-year terms.

(3) On or before the first day of July, one thousand nine hundred eighty-seven, and each year thereafter in which the term of a member is to expire, the governor shall appoint a qualified candidate for each vacancy on the board occurring by reason of the expiration of a term.

(4) Within sixty days of the occurrence of a vacancy on the board which occurs for any reason other than the expiration of a term, the governor shall appoint a qualified candidate to serve the unexpired term of the member whom he or she succeeds.

(c) Before entering upon the performance of his or her duties, each member of the board shall take the oath required by section five, article IV of the constitution of this state. No member of the board may be removed from office by the governor except for official misconduct, malfeasance in office, incompetence, neglect of duty or gross immorality, and then only in the manner prescribed by law for the removal by the governor of state elective officers.

(d) On the second Monday in July, one thousand nine
hundred eighty-six, the board shall hold its first annual business meeting to elect a chairperson and secretary from its membership, organize the affairs of the board and transact such other business as may come before it. Such meeting shall be called at a time and place in this state designated by an appointee named by the governor as a temporary chairperson to serve until a chairperson is elected. The board shall hold an annual business meeting at the call of the chairperson in July, one thousand nine hundred eighty-seven, and in each year thereafter, to elect a chairperson and secretary and transact such other business as may come before it. Additional meetings may be held at the call of the chairperson or at the written request of any three members. Four members of the board constitute a quorum. Each member of the board shall receive per diem compensation of fifty dollars for each day actually engaged in the duties of his or her office and reimbursement for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member of the board.

§30-31-5. Powers and duties of board; disposition of board funds.

(a) In addition to the duties set forth elsewhere in this article, the board shall:

(1) Issue, renew, deny, suspend or revoke licenses to engage in the practice of counseling and place a licensed counselor on probation in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter provided, may review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension or revocation;

(2) Promulgate reasonable rules pursuant to article three, chapter twenty-nine-a of this code, implementing the provisions of this article and the powers and duties conferred upon the board hereby including, but not limited to, rules setting forth:

(i) Any and all specific master's and doctoral degree programs considered to be equivalent to a master's or doctoral degree program in counseling for purposes of
licensure under subdivision (4), subsection (a), section seven of this article;

(ii) The nature of supervised professional experience approved by the board for the purposes of licensure under subdivision (4), subsection (a), section seven of this article;

(iii) A code of ethics for licensed counselors patterned after the codes of ethics of related professional groups; and

(iv) Forms for license applications and license renewal applications;

(3) Keep accurate and complete records of its proceedings, certify the same as may be appropriate and submit an annual report to the governor and the Legislature in such form as the governor may require;

(4) Adopt an official seal to be affixed to all licenses issued by board;

(5) Appoint an examiner to determine the eligibility of applicants for a license to engage in the practice of counseling;

(6) Employ, direct, discharge and define the duties of any and all professional, clerical or other personnel necessary to effectuate the provisions of this article;

(7) Take any other actions as may be reasonably necessary to effectuate the provisions of this article; and

(8) Accept gifts, grants and donations from any source for the purposes of or incidental to this article.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him or her with the treasurer of the state and credited to an account to be known as the "Board of Examiners in Counseling Fund." The compensation and expenses of members of the board and all other costs and expenses incurred by the board in the administration of this article shall be paid from the fund, and no part of the state's general revenue fund may be expended for such 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
crime or crimes and any other evidence necessary for
the board to judge present fitness for licensure or
whether licensure will enhance the likelihood that the
applicant will commit the same or similar offenses;

(3) Not be an alcohol or drug abuser as these terms
are defined in section eleven, article one-a, chapter
twenty-seven of this code;

(4) Have earned a master's degree in an accredited
counseling program or in a field closely related to an
accredited counseling program as determined by the
board, or have received training equivalent to such
degree as may be determined by the board, and have
at least two years of supervised professional experience
in counseling of such a nature as shall be designated by
the board, including at least one year's experience after
earning an aforementioned master's degree or equivalent;
or have earned a doctorate degree in an accredited
counseling program or in a field closely related to an
accredited counseling program as determined by the
board, or have received training equivalent to such
degree as may be determined by the board, and have
at least one year of supervised professional experience
in counseling of such a nature as shall be designated by
the board after earning an aforementioned doctorate
degree or equivalent; and

(5) Have passed a standardized national certification
examination in counseling approved by the board.

(b) The following persons are eligible for a license to
engage in the practice of counseling without having
passed a standardized national certification examination
in counseling:

(1) Any person who meets the qualifications set forth
in subdivisions (1) through (4), subsection (a) of this
section, and who makes an application to the board for
a license before the first day of July, one thousand nine
hundred eighty-seven;

(2) Any person who:

(i) Is a resident of or employed in this state on the
effective date of this article;
(ii) Makes an application for a license within twelve months after the date all initial appointees to the board commence serving their terms;

(iii) Meets the qualifications set forth in subdivisions (1) through (3), subsection (a) of this section; and

(iv) Was in the practice of counseling for two years of the five calendar years next preceding the effective date of this article; or

(3) Any person who holds a license or certificate to engage in the practice of counseling issued by any other state, the qualifications for which license or certificate are determined by the board to be at least as great as those provided in this article.

(c) Every applicant must submit an application for a license to practice counseling to the secretary of the board in such manner, on such forms and containing such information as the board may prescribe and pay to the board a nonrefundable application fee of fifty dollars.

§30-31-8. Issuance of license; renewal of license; renewal fee; information required in application for renewal.

(a) Whenever the board finds that an applicant meets all of the qualifications of this article for a license to engage in the practice of counseling, it shall forthwith issue a license to the applicant. The board shall deny a license to any applicant who does not meet all of the qualifications.

(b) Every license to engage in the practice of counseling must be renewed biennially during the month of July. To renew a license, a licensed professional counselor must submit an application for renewal to the secretary of the board on such forms as the board may prescribe and pay to the board a renewal fee of twenty-five dollars. Any license which is not so renewed shall automatically lapse. Any license which has lapsed may be renewed within two years of its expiration date by payment to the board of the appropriate renewal fee for each period or part thereof during which the license was
not renewed.

c) Each application to renew a license shall contain or be accompanied by evidence of continued professional development in the practice of counseling as determined by the board by rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code and any such other reasonable information as the board may consider appropriate.

§30-31-9. Suspension or revocation of license.

(a) The board may at any time upon its own motion, and shall upon the written complaint of any person, conduct an investigation to determine whether there are any grounds for placing a licensed professional counselor on probation or for the suspension or revocation of a license issued under the provisions of this article.

(b) The board, upon the affirmative vote of at least five of its members, shall place a licensed professional counselor on probation, or suspend or revoke any license when it finds that the holder thereof:

(1) Has been convicted of a felony or a crime involving moral turpitude;

(2) Has used narcotic drugs, other controlled substances or alcohol to the extent that it affects his or her professional competency;

(3) Is under a declaration of mental incompetence;

(4) Has obtained or attempted to obtain a license issued under the provisions of this article by fraud, deceit or willful misrepresentation;

(5) Has failed or refused to comply with the provisions of this article or any rule promulgated by the board hereunder or any order or final decision of the board;

(6) Has violated the current code of ethics adopted by the board;

(7) Has impersonated another licensed professional counselor; or

(8) Has allowed his or her name or license issued
under the provisions of this article to be used by or transferred to any other person or persons to perform counseling services.

(c) Any licensed professional counselor whose license has been suspended or revoked or who has been placed on probation pursuant to board action under the provisions of subdivisions (1) or (2) of this subsection may be reinstated upon a showing of competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensed professional counselor as determined by the board.


(a) Whenever the board denies an application for any license or renewal of any license or suspends or revokes any license or places any licensed professional counselor on probation, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensed professional counselor, as the case may be, at his or her last known address, by certified mail, return receipt requested. The order shall state the grounds for the action taken and shall require that any license suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of the copy of the order.

(b) Any person adversely affected by any such order is entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" as set forth in section one, article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he or she files with the board a written demand for a hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order placing a licensed professional counselor on probation, suspending or revoking a license or denying an application for a renewal license. The board may require the person demanding the hearing to give reasonable security for the costs thereof and if the person does not substantially prevail at the hearing, such security shall be forfeited or the costs shall be assessed against him or her and may be collected by an
(c) Upon receipt of a written demand for a hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code apply to and govern the hearing and the administrative procedures in connection with and following the hearing, with like effect as if the provisions of said article five were set forth in this section.

(e) Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing, any member of the board has the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five, chapter twenty-nine-a of this code and all of the provisions of said section one dealing with subpoenas and subpoenas duces tecum apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(f) At any such hearing the person who demanded the same may represent himself or herself or be represented by an attorney licensed to practice law in this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his or her assistants without additional compensation.

(g) After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code. A copy of the decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding the hearing, and his or her attorney of record, if any.
(h) The decision of the board is final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section eleven of this 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 board rendered after a hearing held in accordance with the provisions of section ten of this article is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code apply to and govern such judicial review with the effect as if the provisions of said section four were set forth in this section.

2 The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

3 Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his or her assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

§30-31-12. Penalties.

1 Any person who violates any of the provisions of this article, any of the reasonable rules promulgated hereunder or any order or any final decision of the board is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.


1 All information communicated to or acquired by a licensed professional counselor while engaged in the practice of counseling with a client is privileged information and may not be disclosed by the counselor
except:

(a) With the written consent of the client, or in the case of death or disability, with the written consent of a personal representative or other person authorized to sue or the beneficiary of any insurance policy on the client's life, health or physical condition;

(b) When a communication reveals the contemplation of an act dangerous to the client or others; or

(c) When the client, or his or her personal representative, waives the privilege by bringing charges against the licensed professional counselor.

§30-31-14. Actions to enjoin violations.

Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule promulgated hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. The application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or result in prosecution or conviction under the provisions of section twelve of this article.

Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules promulgated hereunder and all orders and final decisions of the board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to
the supreme court of appeals. Any such appeal shall be
sought in the manner and within the time provided by
law for appeals from circuit courts in other civil actions.

The board shall be represented in all such proceedings
by the attorney general or his or her assistants and in
such proceedings in the circuit court by the prosecuting
attorneys of the several counties as well, all without
additional compensation.

§30-31-15. Termination of board.

The West Virginia board of examiners in counseling
shall be terminated pursuant to the provisions of article
ten, chapter four of this code on the first day of July,
one thousand nine hundred ninety-two, unless sooner
terminated or unless continued or reestablished pursu-

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 amend-
ed, 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.
Every eligible employee, as defined in section one of this article, at the conclusion of such employee's active employment by resignation, death, retirement or otherwise, may be paid in lump sum amount, at their option, for their accrued and unused annual leave at the employee's usual rate of pay at such time. Such lump sum payment shall be made by the time of what would have been the employee's next regular payday had his employment continued; and in determining the amount of such annual leave entitlement, weekends, holidays or other 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.

The West Virginia public employees insurance board is hereby created and established to provide group hospital and surgical insurance, group major medical insurance, and group life and accidental death insurance for all employees in the manner as hereinafter provided. The board shall constitute a body corporate.
All business of the board shall be transacted in the name of the West Virginia public employees insurance board.

After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the public employees insurance board should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the public employees insurance board shall continue to exist until the first day of July, one thousand 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 contract or contracts entered into under the provisions of this article that the costs of any such group hospital and surgical insurance, group major medical insurance, group life and accidental death insurance benefit plan or plans may be paid by the employer and employee. In addition, each employee shall be entitled to have his spouse and dependents, as defined by the rules and regulations of the board, included in any group hospital and surgical insurance or group major medical insurance coverage provided. The board shall adopt rules and regulations according to chapter twenty-nine-a of this code governing the discontinuance and resumption of any employee's coverage for his spouse and dependents.

16 Should a participating employee be terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee: Provided, That an
employee discharged for misconduct shall not be eligible for extended benefits under this section: Provided, however, That coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued: Provided further, That should the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his prior termination, he shall not be considered a new enrollee and shall not be required to again contribute his share of the premium cost, if he had already fully contributed such share during the prior period of employment.

When a participating employee is compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: Such insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his retirement. For a retired employee, his spouse and dependents, such insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his retirement.

Any employee who retired prior to the twenty-first of April, one thousand nine hundred seventy-two, and who also otherwise meets the conditions of the “retired employee” definition in section two of this article, shall be eligible for insurance coverage under the same terms and provisions of this article. The premium cost for any such coverage shall be borne by the retired employee and the rates for such coverage shall accurately reflect the total cost of such coverage and shall not be subsidized by the rate structure for any other insurance programs administered pursuant to the West Virginia
public employees insurance act.

All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to the twenty-first day of April, one thousand nine hundred seventy-two; and those hereafter retiring, shall be eligible for and permitted to obtain health insurance coverage, upon payment of the full premium cost thereof, separately, without also being required to obtain any life insurance coverage hereunder: Provided, That any requirement heretofore established to prevent the subsidizing of any separate class by the rate structure of any other program administered hereunder shall continue.

A surviving spouse and dependents of a deceased employee, who was either an active or retired employee just prior to such decease, shall be entitled to be included in any group insurance coverage provided under this article, and such spouse and dependents shall bear the premium cost of such insurance coverage and the rates for such coverage shall accurately reflect the total cost of such coverage and shall not be subsidized by any other insurance programs administered pursuant to the West Virginia public employees insurance act.

In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of such positions preclude the arising or accumulation of such, so as to be thereafter usable as premium paying credits for which such officials may claim extended insurance benefits.

§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.

The board shall promulgate such rules and regulations as may be required for the effective administration of the provisions of this article. All rules and regulations of the board and all hearings held by the board shall be promulgated and held in accordance with the provisions of chapter twenty-nine-a of the code.

Such regulations shall provide that any employee of the state who has been compelled or required by law to retire before reaching the age of sixty-five years shall be eligible to participate in the public employees' health insurance program at his own expense for the cost of coverage after any extended coverage to which he, his spouse and dependents may be entitled by virtue of his accrued annual leave or sick leave, pursuant to the provisions of section twelve of this article, has expired. The dependents of any deceased member shall be entitled to continue their participation and coverage upon payment of the total cost for such coverage. Any employee who voluntarily retires, as provided by law, shall be eligible to participate in the public employees' health insurance program at his own expense for the cost of coverage after any extended coverage to which he, his spouse and dependents may be entitled by virtue of his accrued annual leave or sick leave, pursuant to the provisions of section twelve of this article, has expired.

Any employee who is on a medical leave of absence, approved by his employer, shall, subject to the following provisions of this paragraph, be entitled to continue his coverage until he returns to his employment, and such employee and employer shall continue to pay their proportionate share of premium costs as provided by this article: Provided, That the employer shall be obligated to pay its proportionate share of the premium cost only for a period of one year: Provided, however, that during the period of such leave of absence, the employee shall, at least once each month, submit to the employer the statement of a qualified physician certifying that the employee is unable to return to work.
Any retiree, retiring heretofore or hereafter, shall be eligible to participate in the public employees' life insurance program, including the optional life insurance coverage as already available to active employees under this article, at his own expense for the cost of coverage, based upon actuarial experience; and the board shall prepare, by rule and regulation, for such participation and coverages under declining term insurance and 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 officials, officers and employees of the state and the state board of regents shall be paid twice per month, and under the same procedures and in the same manner as the state auditor currently pays agencies on such basis; beginning the first day of July, one thousand nine hundred eighty-six. Nothing contained in this section is intended to increase or diminish the salary or wages of any official, officer or employee.
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, 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, one thousand nine hundred eighty-seven, the "West Virginia Department of Public Safety Rank Restructure Act." The superintendent shall, only in the initial implementation of the rank restructure act, promote members without benefit or requirement of a promotion evaluation board process as long as those advanced in rank hold the present rank immediately preceding that rank to which they are advanced in accordance with the new rank
structure, i.e., master or first sergeant shall be promoted to second lieutenant; lieutenants shall be promoted to first lieutenants; sergeants shall be promoted to master or first sergeant; corporals shall be promoted to sergeant and trooper first class shall be promoted to corporal so long as persons promoted hold those ranks which are being advanced by this act to the next higher rank.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

The superintendent shall appoint, from the enlisted membership of the department, a deputy superintendent who shall hold the rank of lieutenant colonel and be next in authority to the superintendent. The superintendent shall appoint, from the enlisted membership of the department, the number of other officers and members he deems necessary to operate and maintain the executive offices, training school, scientific laboratory, keep records relating to crimes and criminals, coordinate traffic safety activities, maintain a system of supplies and accounting and perform other necessary services.

The ranks within the membership of the department shall be colonel, lieutenant colonel, major, captain, lieutenant, master sergeant, first sergeant, sergeant, corporal, trooper first class or trooper. On and after the first day of July, one thousand nine hundred eighty-seven, the rank of lieutenant within the membership of the department shall be changed to first lieutenant and second lieutenant. Each such member while in uniform shall wear the insignia of rank as provided by law and departmental regulations.

The superintendent may appoint from the membership of the department eleven principal supervisors who shall receive the compensation and hold the temporary rank of lieutenant colonel, major or captain at the will and pleasure of the superintendent. Such appointments shall be exempt from any merit standards established by the promotion evaluation board. Any person appointed to a temporary rank under the provisions of this article shall retain his permanent rank and shall remain eligible for promotion if his permanent rank is below that of captain. Upon the termination of a temporary appointment by the
Public Safety

§15-2-9. Promotions; promotion evaluation board to be established.

The superintendent shall establish within the department of public safety a promotion evaluation board, which shall be representative of commissioned and noncommissioned officers within the department. The promotion evaluation board shall prescribe merit standards for promotion and maintain lists of eligible candidates.

The superintendent shall promote a member to the permanent rank of trooper first class, corporal, sergeant, first sergeant, master sergeant or lieutenant, and, on and after the first day of July, one thousand nine hundred eighty-seven, second lieutenant or first lieutenant from among the top three names on the current list of eligible candidates established by the promotion evaluation board 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.

(a) The standard uniform to be used by the department of public safety after the effective date of this article shall be as follows: Forestry green blouse with West Virginia state police emblem on sleeve; black shoulder strap, one-inch black stripe around sleeve, four inches from end of sleeve; forestry green breeches with one-inch black stripe down the side; trousers (slacks) with one-inch black stripe down the side for officers and clerks regularly enlisted in the department; forestry green shirts with West Virginia state police emblem on sleeve; black shoulder straps; forestry green mackinaw with West Virginia state police emblem on sleeve; black shoulder straps; one-inch black stripe around sleeve four inches from end of sleeve; campaign hat of olive drab color; black Sam Browne belt with holster; black leggings and shoes; the officer's uniform
will have one and one-quarter inch black stripe around the
sleeve of blouse and mackinaw four inches from end of
sleeve circumposed with one-half inch gold braid, also
black collars on blouse, with two silver shoulder bars for
captains, one silver shoulder bar for first lieutenant, one
gold shoulder bar for second lieutenant. For
noncommissioned officers the uniform blouse and shirt will
have thereon black chevrons of the appropriate rank.
(b) The superintendent shall establish the weapons and
enforcement equipment which shall be authorized for use
by members of the department, and shall provide for
periodic inspection of such weapons and equipment. He
shall provide for the discipline of members using other than
authorized weapons and enforcement equipment.
(c) The superintendent shall provide the members of the
department with suitable arms and weapons, and, when he
deems it necessary, with suitably equipped automobiles,
motorcycles, watercraft, airplanes and other means of
conveyance, to be used by the department of public safety,
the governor, and other officers and executives in the
discretion of the governor, in times of flood, disaster, and
other emergencies, for traffic study and control, criminal
and safety work, and in other matters of official business.
He shall also provide the standard uniforms for all members
of the department, for officers, noncommissioned officers
and troopers herein provided for. All uniforms and all arms,
weapons and other property furnished the members of the
department by the state of West Virginia shall be and
remain the property of the state.
(d) The superintendent is authorized to purchase and
maintain on behalf of members group life insurance not to
exceed the amount of five thousand dollars on behalf of
each member.
(e) The superintendent is authorized to contract and
furnish at department expense medical and hospital
services for treatment of illness or injury of a member which
shall be determined by the superintendent to have been
incurred by such member while engaged in the performance
of duty and from causes beyond control of such members.
(f) The superintendent shall establish and maintain
local headquarters at such places in West Virginia as are in
his judgment suitable and proper to render the department
members of public safety most efficient for the purpose of preserving
the peace, protecting property, preventing crime, apprehending criminals and carrying into effect all other provisions of this article. The superintendent shall provide, by lease or otherwise, for housing and quarters for the accommodation of the members of the department of public safety, and shall provide all equipment and supplies 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.

Members of the department shall receive annual salaries pursuant to appropriation by the Legislature, payable at least monthly as follows:

1. Any lieutenant colonel shall receive an annual salary of thirty-two thousand one hundred dollars; any major
2. shall receive an annual salary of twenty-nine thousand dollars; any
any captain shall receive an annual salary of twenty-seven thousand three hundred seventy-two dollars; any lieutenant shall receive an annual salary of twenty-five thousand eight hundred dollars; any master sergeant or first sergeant shall receive an annual salary of twenty-four thousand two hundred twenty-eight dollars; any sergeant shall receive an annual salary of twenty-two thousand six hundred fifty-six dollars; any corporal shall receive an annual salary of twenty-one thousand seventy-two dollars; any trooper first class shall receive an annual salary of nineteen thousand five hundred dollars; and any newly enlisted trooper shall receive a salary of one thousand four hundred five dollars monthly during the period of his basic training, and upon the satisfactory completion of such training and assignment to active duty, each such trooper shall receive, during the remainder of his first year's service, a salary of one thousand four hundred five dollars monthly. During the second year of his service in the department, each trooper shall receive an annual salary of eighteen thousand five hundred fifty-two dollars; during the third year of his service each such trooper shall receive an annual salary of eighteen thousand eight hundred fifty-two dollars; and during the fourth and fifth year of such trooper's service and for each year thereafter, he shall receive an annual salary of nineteen thousand ninety-two dollars. Each member of the department whose salary is fixed and specified herein shall receive and be entitled to an increase in salary over that hereinbefore set forth, for grade in rank, based on length of service, including that heretofore and hereafter served with the department as follows: At the end of five years of service with the department, such member shall receive a salary increase of three hundred dollars to be effective during his next three years of service and a like increase at three-year intervals thereafter, with such increases to be cumulative. In applying the foregoing salary schedule where salary increases are provided for length of service, members of the department in service at the time this article becomes effective shall be given credit for prior
service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.

The Legislature finds and declares that there is litigation pending in the circuit court of Kanawha County on the question whether members of the department of public safety are covered by the provisions of the state wage and hour law, article five-c, chapter twenty-one of this code. The Legislature further finds and declares that because of the unique duties of members of the department, it is not appropriate to apply said wage and hour provisions to them. Accordingly, members of the department of public safety are hereby excluded from the provisions of said wage and hour law. The express exclusion hereby enacted shall not be construed as any indication that such members were or were not heretofore covered by said wage and hour law.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training may receive supplemental pay as hereinafter provided.

The superintendent shall, within thirty days after the effective date hereof, promulgate a rule or regulation to establish the number of hours per month which shall constitute the standard work month for the members of the department. Such rule or regulation shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of such supplemental payment when hours are worked in excess of said standard work month. Such rule or regulation shall be promulgated pursuant to the provisions of chapter twenty-nine-a of this code. The superintendent shall certify monthly to the department's payroll officer the names of those members who have worked in excess of the standard work month and the amount of their entitlement to supplemental payment.

The supplemental payment shall be in an amount equal to one and one-half percent of the annual salary
of a trooper during his second year of service, not to exceed two hundred twenty-five dollars monthly. The superintendent and civilian employees of the department shall not be eligible for any such supplemental payments.

Each member of the department, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his duties, a bond with security in the sum of five thousand dollars payable to the state of West Virginia, conditioned upon the faithful performance of his duties, and such bond shall be approved as to form by the attorney general and to sufficiency by the governor.

Any member of the department who is called to perform active duty for training or inactive duty training in the national guard or any reserve component of the armed forces of the United States annually shall be granted upon request leave time not to exceed thirty calendar days for the purpose of performing such active duty for training or inactive duty training, and the time so granted shall not be deducted from any leave 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
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.

(a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the public service commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:

1. Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;
2. Provide the availability of adequate, economical and reliable utility services throughout the state;
3. Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources, such as coal;
4. Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or
preference, applied in a manner consistent with the
purposes and policies set forth in article two-a of this
chapter, and based primarily on the costs of providing these
services;
(5) Encourage energy conservation and the effective
and efficient management of regulated utility enterprises;
and
(6) Encourage and support open and competitive
marketing of rail carrier services by providing to all rail
carriers access to tracks as provided in section three-b,
article three of this chapter. It is the purpose of the
Legislature to remove artificial barriers to rail carrier
service, stimulate competition, stimulate the free flow of
goods and passengers throughout the state and promote the
expansion of the tourist industry, thereby improving the
economic condition of the state.
(b) The Legislature creates the public service
commission to exercise the legislative powers delegated to
it. The public service commission is charged with the
responsibility for appraising and balancing the interests of
current and future utility service customers, the general
interests of the state's economy and the interests of the
utilities subject to its jurisdiction in its deliberations and
decisions.
(c) The Legislature directs the public service
commision to identify, explore and consider the potential
benefits or risks associated with emerging and state-of-the-
art concepts in utility management, rate design and
conservation. The commission may conduct inquiries and
hold hearings regarding such concepts in order to provide
utilities subject to its jurisdiction and other interested
persons the opportunity to comment, and shall report to the
governor and the Legislature regarding its findings and
policies to each of these areas not later than the first day of
the regular session of the Legislature in the year one
thousand nine hundred eighty-five, and every two years
thereafter.
(d) It is legislative policy to ensure that the Legislature
and the general public become better informed regarding
the regulation of public utilities in this state and the
conduct of the business of the public service commission. To
aid in the achievement of this policy, the public service
commission annually shall present to the joint committee
on government and finance, created by article three, chapter four of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

(1) The major activities of the commission for the year especially as such activities relate to the implementation of the provisions of this chapter;

(2) Important policy decisions reached and initiatives undertaken during the year;

(3) The current balance of supply and demand for natural gas and electric utility services in the state and forecast of the probable balance for the next ten years; and

(4) Other information considered by the commission to be important including recommendations for statutory reform and the reasons for such recommendations.

(e) In addition to any other studies and reports required to be conducted and made by the public service commission pursuant to any other provision of this section, the commission shall study and initially report to the Legislature no later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty, upon:

(1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this state have been capped off or shut in; the number of such wells, their probable extent of future production and the reasons given and any justification for, capping off or shutting in such wells, the reasons, if any, why persons engaged or heretofore engaged in the development of gas wells in this state or the Appalachian areas have been discouraged from drilling, developing or selling the production of such wells and whether there are fixed policies by any utility or group of utilities to avoid the purchase of natural gas produced in the Appalachian region of the United States generally and in West Virginia specifically.

(2) The extent of the export and import of natural gas utility supplies in West Virginia.

(3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia.

In carrying out the provisions of this section the commission shall have jurisdiction over such persons,
whether public utilities or not, as may be in the opinion of the commission necessary to the exercise of its mandate and may compel attendance before it, take testimony under oath and compel the production of papers or other documents. Upon reasonable request by the commission, all other state agencies shall cooperate with the commission in carrying out the provisions and requirements of this subsection.

(f) No later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty, the public service commission shall submit to the Legislature a plan for internal reorganization which plan shall specifically address the following:

(1) A division within the public service commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decision making and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

(2) The creation of a division which shall act as an advocate for the position of and in the interest of all customers;

(3) The means and procedures by which the division to be created pursuant to the provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the public service commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners from hearing motor carrier cases;

(5) Which members of the staff of the public service commission shall be exempted from the salary schedules or pay plan adopted by the civil service commission and identify such staff members by job classification or designation, together with the salary or salary ranges for
each such job classification or designation;

(6) The manner in which the commission will strengthen its knowledge and independent capacity to analyze key conditions and trends in the industries it regulates extending from general industry analysis and supply-demand forecasting to continuing and more thorough scrutiny of the capacity planning, construction management, operating performance and financial condition of the major companies within these industries.

Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such means as the commission shall direct, including, but not limited to, separate clerical and professional staffing for each division. Further, the public service commission is directed to incorporate within the said plan to the fullest extent possible the recommendations presented to the subcommittee on the public service commission of the joint committee on government and finance in a final report dated February, one thousand nine hundred seventy-nine, and entitled “A Plan for Regulatory Reform and Management Improvement.”

The commission shall before the fifth day of January, one thousand nine hundred eighty, adopt said plan by order, which order shall promulgate the same as a rule of the commission to be effective upon the date specified in said order, which date shall be no later than the thirty-first day of December, one thousand nine hundred eighty. Certified copies of such order and rule shall be filed on the first day of the regular session of the Legislature, one thousand nine hundred eighty, by the chairman of the commission with the clerk of each house of the Legislature, the governor and the secretary of state. The chairman of the commission shall also file with the office of the secretary of state the receipt of the clerk of each house and of the governor, which receipt shall evidence compliance with this section.

Upon the filing of a certified copy of such order and rule, the clerk of each house of the Legislature shall report the same to their respective houses and the presiding officer thereof shall refer the same to appropriate standing committee or committees.
Within the limits of funds appropriated therefor, the rule of the public service commission shall be effective upon the date specified in the order of the commission promulgating it unless an alternative plan be adopted by general law or unless the rule is disapproved by a concurrent resolution of the Legislature adopted prior to adjournment sine die of the regular session of the Legislature to be held in the year one thousand nine hundred eighty: Provided, That if such rule is approved in part and disapproved in part by a concurrent resolution of the Legislature adopted prior to such adjournment, such rule shall be effective to the extent and only to the extent that the same is approved by such concurrent resolution.

The rules promulgated and made effective pursuant to this section shall be effective notwithstanding any other provisions of this code for the promulgation of rules or regulations.

(g) The public service commission is hereby directed to cooperate with the joint committee on government and finance of the Legislature in its review, examination and study of the administrative operations and enforcement record of the railroad safety division of the public service commission and any similar studies.

(h) (1) The Legislature hereby finds that rates for natural gas charged to customers of all classes have risen dramatically in recent years to the extent that such increases have adversely affected all customer classes. The Legislature further finds that it must take action necessary to mitigate the adverse consequences of these dramatic rate increases.

(2) The Legislature further finds that the practices of natural gas utilities in purchasing high-priced gas supplies, in purchasing gas supplies from out-of-state sources when West Virginia possesses abundant natural gas, and in securing supplies, directly or indirectly by contractual agreements including take-or-pay provisions, indefinite price escalators, or most-favored nation clauses have contributed to the dramatic increase in natural gas prices. It is therefore the policy of the Legislature to discourage such purchasing practices in order to protect all customer classes.

(3) The Legislature further finds that it is in the best interests of the citizens of West Virginia to encourage the
transportation of natural gas in intrastate commerce by
interstate or intrastate pipelines or by local distribution
companies in order to provide competition in the natural
gas industry and in order to provide natural gas to
consumers at the lowest possible price.

(i) The Legislature further finds that transactions
between utilities and affiliates are a contributing factor to
the increase in natural gas and electricity prices and tend to
confuse consideration of a proper rate of return calculation.
The Legislature therefore finds that it is imperative that the
public service commission have the opportunity to properly
study the issue of proper rate of return for lengthy periods
of time and to limit the return of a utility to a proper level
when compared to return or profit that affiliates earn on
transactions with sister utilities.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.


§24-2-4d. Procedures for intrastate rail carrier rate-making and complaints.


After the thirtieth day of June, one thousand nine
hundred eighty-one, no public utility subject to this chapter
except those utilities subject to the provisions of section
four-b and section four-d of this article, shall change,
suspend or annul any rate, joint rate, charge, rental or
classification except after thirty days' notice to the
commission and the public, which notice shall plainly state
the changes proposed to be made in the schedule then in
force and the time when the changed rates or charges shall
go into effect; but the commission may enter an order
suspending the proposed rate as hereinafter provided. The
proposed changes shall be shown by printing new
schedules, or shall be plainly indicated upon the schedules
in force at the time, and kept open to public inspection:
Provided, That the commission may, in its discretion, and
for good cause shown, allow changes upon less time than the
notice herein specified, or may modify the requirements of
this section in respect to publishing, posting and filing of
tariffs, either by particular instructions or by general order.
Whenever there shall be filed with the commission any
schedule stating a change in the rates or charges, or joint
rates or charges, or stating a new individual or joint rate or
charge or joint classification or any new individual or joint
regulation or practice affecting any rate or charge, the
commission may either upon complaint or upon its own
initiative without complaint enter upon a hearing
concerning the propriety of such rate, charge,
classification, regulation or practice; and, if the
commission so orders, it may proceed without answer or
other form of pleading by the interested parties, but upon
reasonable notice, and, pending such hearing and the
decisions thereon, the commission, upon filing with such
schedule and delivering to the public utility affected
thereby a statement in writing of its reasons for such
suspension, may suspend the operation of such schedule
and defer the use of such rate, charge, classification,
regulation or practice, but not for a longer period than two
hundred seventy days beyond the time when such rate,
charge, classification, regulation or practice would
otherwise go into effect; and after full hearing, whether
completed before or after the rate, charge, classification,
regulation or practice goes into effect, the commission may
make such order in reference to such rate, charge,
classification, regulation or practice as would be proper in a
proceeding initiated after the rate, charge, classification,
regulation or practice had become effective: Provided, That
in the case of a public utility having two thousand five
hundred customers or less and which is not principally
owned by any other public utility corporation or public
utility holding corporation, the commission may suspend
the operation of such schedule and defer the use of such
rate, charge, classification, regulation or practice, but not
for a longer period than one hundred twenty days beyond
the time when such rate, charge, classification, regulation
or practice would otherwise go into effect; and in the case of
a public utility having more than two thousand five
hundred customers, but not more than five thousand
customers, and which is not principally owned by any other
public utility corporation or public utility holding
corporation, the commission may suspend the operation of
such schedule and defer the use of such rate, charge,
classification, regulation or practice, but not for a longer
period than one hundred fifty days beyond the time when
such rate, charge, classification, regulation or practice
would otherwise go into effect; and in the case of a public
utility having more than five thousand customers, but not
more than seven thousand five hundred customers, and
which is not principally owned by any other public utility
corporation or public utility holding corporation, the
commission may suspend the operation of such schedule
and defer the use of such rate, charge, classification,
regulation or practice, but not for a longer period than one
hundred eighty days beyond the time when such rate,
charge, classification, regulation or practice would
otherwise go into effect; and after full hearing, whether
completed before or after the rate, charge, classification,
regulation or practice goes into effect, the commission may
make such order in reference to such rate, charge,
classification, regulation or practice as would be proper in a
proceeding initiated after the rate, charge, classification,
regulation or practice had become effective: Provided,
however, That if any such hearing and decision thereon is
not concluded within the periods of suspension, as above
stated, such rate, charge, classification, regulation or
practice shall go into effect at the end of such period not
subject to refund: Provided further, That if any such rate,
charge, classification, regulation or practice goes into effect
because of the failure of the commission to reach a decision,
the same shall not preclude the commission from rendering
a decision with respect thereto which would disapprove,
reduce or modify any such proposed rate, charge,
classification, regulation or practice, in whole or in part,
but any such disapproval, reduction or modification shall
not be deemed to require a refund to the customers of such
utility as to any rate, charge, classification, regulation or
practice so disapproved, reduced or modified. The fact of
any rate, charge, classification, regulation or practice going
into effect by reason of the commission's failure to act
thereon shall not affect the commission's power and
authority to subsequently act with respect to any such
application or change in any rate, charge, classification,
regulation or practice. Any rate, charge, classification,
regulation or practice which shall be approved,
disapproved, modified or changed, in whole or in part, by
decision of the commission shall remain in effect as so
approved, disapproved, modified or changed during the
period or pendency of any subsequent hearing thereon or
appeal therefrom. Orders of the commission affecting rates,
charges, classifications, regulations or practices which
have gone into effect automatically at the end of the
suspension period are prospective in effect only.

At any hearing involving a rate sought to be increased or
involving the change of any rate, charge, classification,
regulation or practice, the burden of proof to show the
justness and reasonableness of the increased rate or
proposed increased rate, or the proposed change of rate,
charge, classification, regulation or practice shall be upon
the public utility making application for such change. The
commission shall, whenever practicable and within
budgetary constraints, conduct one or more public hearings
within the area served by the public utility making
application for such increase or change, for the purpose of
obtaining comments and evidence on the matter from local
ratepayers.

Each public utility subject to the provisions of this
section shall be required to establish, in a written report
which shall be incorporated into each general rate case
application, that it has thoroughly investigated and
considered the emerging and state-of-the-art concepts in
the utility management, rate design and conservation as
reported by the commission under subsection (c), section
one, article one of this chapter, as alternatives to, or in
mitigation of, any rate increase. The utility report shall
contain as to each concept considered the reasons for
adoption or rejection of each. When in any case pending
before the commission all evidence shall have been taken
and the hearing completed, the commission shall render a
decision in such case. The failure of the commission to
render a decision with respect to any such proposed change
in any such rate, charge, classification, regulation or
practice within the various time periods specified in this
section after the application therefor shall constitute
neglect of duty on the part of the commission and each
member thereof.

Where more than twenty members of the public are
affected by a proposed change in rates, it shall be a
sufficient notice to the public within the meaning of this
section if such notice is published as a Class II legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication
area for such publication shall be the community where the
majority of the resident members of the public affected by
such change reside or, in case of nonresidents, have their
principal place of business within this state.

The commission may order rates into effect subject to
refund, plus interest in the discretion of the commission, in
cases in which the commission determines that a temporary
or interim rate increase is necessary for the utility to avoid
financial distress, or in which the costs upon which these
rates are based are subject to modification by the
commission or another regulatory commission and to
refund to the public utility. In such case the commission
may require such public utility to enter into a bond in an
amount deemed by the commission to be reasonable and
conditioned upon the refund to the persons or parties
entitled thereto of the amount of the excess if such rates so
put into effect are subsequently determined to be higher
than those finally fixed for such utility.

No utility may make application for a general rate
increase while another general rate application is pending
before the commission and not finally acted upon, except
pursuant to the provisions of the next preceding paragraph
of this section. The provisions of this paragraph shall not be
construed so as to prohibit any such rate application from
being made while a previous application which has been
finally acted upon by the commission is pending before or
upon appeal to the West Virginia supreme court of appeals.

§24-2-4d. Procedures for intrastate rail carrier rate-making
and complaints.

Inasmuch as the commission retains authority over
intrastate rail rates and complaints pursuant to 49 United
States Code §11501 and other federal law, and inasmuch as
the commission's procedures are subject to periodic review
and certification by the interstate commerce commission
for compliance with federal standards, the general rate-
making procedures set forth in section four-a, article two,
chapter twenty-four of this code, shall not be applied to
intrastate railroad rates. The commission shall promulgate
its rules and regulations for the government of intrastate
rail rates. Such rules shall contain notice requirements,
grounds for rate suspension and the permitted suspension
period, procedures for protest, standards for determining market dominance and rate reasonableness, burdens of proof, refund provisions, contract rate procedures and trackage rights. These rules shall also contain procedures for complaints and filing of contract rates. All final orders of the commission concerning intrastate rail rates shall be appealable to the interstate commerce commission in conformance with federally established standards of 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.

(a) The Legislature finds that article XI, section nine of the West Virginia constitution declares railroads in this state to be public highways free to all persons for the transportation of their persons and property, under such regulations as shall be prescribed by the Legislature. It is the policy of this state to protect and promote the economic well-being of its citizens and toward that end to assure the availability of rail transportation services. It is the purpose of this section to promote such vital goals by all available means not in conflict with authority exercised by the federal government in the area of rail transportation.

(b) Rail carriers owning rail tracks located within the borders of this state shall provide open access to such tracks, together with all reasonable, necessary and proper operating facilities for the transportation of passengers and goods to other rail carriers including private carriers transporting their own goods: Provided, That where both the accessed and accessing carrier are negotiating a contract with any person for the transportation of passengers or goods, the accessed carrier shall have the right of first refusal on such contract. The accessed carrier and the accessing carrier shall jointly agree upon a reasonable fee for such access. If the parties cannot reach an agreement on a reasonable access fee, the public service commission shall set a fee pursuant to the provisions of subsection (c) of this section, after taking into consideration the factors set forth in said subsection (c) and giving such weight to each as it may deem appropriate.
The commission shall promulgate regulations providing for the establishment and payment of reasonable access fees to the accessed carrier by the accessing carrier and the orderly, efficient and safe utilization of accessed rails and facilities. In establishing access fees, the commission shall consider: The capital investment made by the accessed carrier; a reasonable rate of return thereon; depreciation; costs involved in track maintenance and operation; the necessary use of the accessed carrier's employees and facilities; any loss of employment or wages by employees of the accessed carrier that might reasonably be anticipated because of the activities of the accessing carrier; other reasonable and necessary expenses incurred by the accessed carrier; and the accessing carrier's usage of the accessed track and facilities in relation to the total use of such track and facilities.

(d) Except as required for safety and efficient operation, no carrier providing access under this section may require the use of its facilities by an accessing carrier.

(e) Rail carriers seeking access under this section shall comply with all applicable interstate commerce commission rules and regulations.

(f) All safety regulations of the federal railroad administration are applicable to rail carriers seeking access under this section, unless waived by the public service commission.

(g) No rail carrier owning rail tracks in the state of West Virginia shall discontinue or abandon use of such trackage without first obtaining authority from the commission to do so, unless the same be done under uniform rules and regulations filed by such rail carrier with the public service commission and approved by said commission.

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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.

(a) The public service commission of West Virginia, heretofore established, is continued and directed as provided by this chapter, chapter twenty-four-a and chapter twenty-four-b. In addition, after having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the public service commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the public service commission shall continue to exist until the first day of July, one thousand nine hundred ninety-two. The public service commission may sue and be sued by that name. Such public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, of not less than ten years' actual experience at the bar. No more than two of said commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article IV of the constitution, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief
administrative officer of the commission. The governor
may remove any commissioner only for incompetency,
neglect of duty, gross immorality, malfeasance in office
or violation of subsection (c) of this section.

(b) The unexpired term of members of the public
service commission at the time this subsection becomes
effective are continued through the thirtieth day of
June, one thousand nine hundred seventy-nine. In
accordance with the provisions of subsection (a) of this
section, the governor shall appoint three commissioners,
one for a term of two years, one for a term of four years
and one for a term of six years, all the terms beginning
on the first day of July, one thousand nine hundred
seventy-nine. All future appointments are for terms of
six years, except that an appointment to fill a vacancy
is for the unexpired term only. The commissioners
whose terms are terminated by the provisions of this
subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any
official relation to, any public utility subject to the
provisions of this chapter, or holding any stocks or bonds
thereof, or who is pecuniarily interested therein, may
serve as a member of the commission or as an employee
thereof. Nor may any such commissioner be a candidate
for or hold public office, or be a member of any political
committee, while acting as such commissioner; nor may
any commissioner or employee of said commission
receive any pass, free transportation or other thing of
value, either directly or indirectly, from any public
utility or motor carrier subject to the provisions of this
chapter. In case any of the commissioners becomes a
candidate for any public office or a member of any
political committee, the governor shall remove him from
office and shall appoint a new commissioner to fill the
vacancy created.

(d) Effective the first day of July, one thousand nine
hundred eighty-four, and in light of the assignment of
new, substantial duties embracing new areas and fields
of activity under certain legislative enactments, each
commissioner shall receive a salary of thirty-nine
thousand two hundred forty dollars a year to be paid in
monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty thousand two hundred ten dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seven thousand five hundred twenty-five dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand five hundred five dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand five hundred dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of July, one thousand nine hundred eighty-four.

(e) Effective the first day of July, one thousand nine hundred eighty-five, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive a salary of forty-one thousand dollars a year to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty-one thousand six hundred dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seven thousand nine hundred dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code,
one thousand five hundred dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand six hundred seventy-five dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the 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, telephone cooperatives and municipally operated public utilities are not subject to the rate approval provisions of section four or four-a of this article but are subject to the limited rate provisions of this section.
2 (b) All rates and charges set by electric cooperatives, natural gas cooperatives, telephone cooperatives and municipally operated public utilities shall be just,
reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services. Such rates and charges shall be adopted by the electric, natural gas or telephone cooperative’s governing board and in the case of the municipally operated public utility by municipal ordinance to be effective not sooner than forty-five days after adoption: Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of such utility for the month next preceding the month in which the rate change is to become effective or the utility shall give its customers, and in the case of a cooperative, its customers, members and stockholders, such other reasonable notices as will allow filing of timely objections to such rate change. Such rates and charges shall be filed with the commission together with such information showing the basis of such rates and charges and such other information as the commission considers necessary. Any change in such rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is received and the electric cooperative, natural gas cooperative, telephone cooperative, or municipality has failed to file with the commission such rates and charges with such information showing the basis of rates and charges and such other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify such rates upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing said rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state; or
(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state, under subdivision (1), subsection (c) of this section, shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of one hundred twenty days from the date said rates or charges would otherwise go into effect, or until an order is issued as provided herein.

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries, or a customer or a group of customers within the municipal boundaries, under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date said rates or charges would otherwise go into effect or until an order is issued as provided herein.

(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. Said hearing examiner shall conduct a public hearing, and shall within one hundred days from the date the said rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying in whole or in part, the rates or charges imposed by the electric, natural gas or telephone cooperative or by...
Upon receipt of a petition for review of the rates under the provisions of subsection (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article. The commission may determine the method by which such rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas or telephone cooperative or municipality requests such a hearing.

The commission may, upon petition by a municipality or electric, natural gas or telephone cooperative, allow an interim or emergency rate to take effect, subject to future modification, if it is determined that such interim or emergency rate is necessary to protect the municipality from financial hardship and if that financial hardship is attributable solely to the purchase of the utility commodity sold. In such cases, the commission may waive the forty-five-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

Notwithstanding any other provision, the commission shall have no authority or responsibility with regard to the regulation of rates, income, services or contracts by municipally operated public utilities for services which are transmitted and sold outside of the state 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.

There shall be a commission known as the "West Virginia Real Estate Commission," which commission shall be a corporation and as such may sue and be sued, may contract and be contracted with and shall have a common seal. The commission shall consist of three persons to be appointed by the governor by and with the advice and consent of the Senate. Two of such appointees each shall have been a resident and a citizen of this state for at least six years prior to his or her appointment and whose vocation for at least ten years shall have been that of a real estate broker or real estate salesman and the third shall be a representative of the public generally. Members in office on the date this section becomes effective shall continue in office until their respective terms expire. The term of the members of said commission shall be for four years and until their successors are appointed and qualify. No more than two members of such commission shall belong to the same political party. No member shall be a candidate for or hold any other public office or be a member of any political committee while acting as such commissioner. In case any commissioner be a candidate for or hold any other public office or be a member of any political committee, his office as such commissioner shall ipso facto be vacated. Members to fill vacancies shall be appointed by the governor for the unexpired term. No member may be removed from office by the governor except for official misconduct, incompetency, neglect of duty, gross immorality or other good cause shown and then only in the manner prescribed by law for the removal by the governor of state elective officers. The governor shall designate one member of the commission as the chairman thereof and the members shall choose one of the members thereof as secretary. Two members of the commission shall constitute a quorum for the conduct of official business.

(a) The commission shall do all things necessary and
convenient for carrying into effect the provisions of this article and may from time to time promulgate reasonable, fair and impartial rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code. Each member of the commission shall receive as full compensation for his services the sum of one hundred dollars per day for each full day actually spent on the work of the commission and his actual and necessary expenses incurred in the performance of duties pertaining to his office.

(b) The commission shall employ an executive secretary and such clerks, investigators and assistants as it shall deem necessary to discharge the duties imposed by the provisions of this article and to effect its purposes, and the commission shall determine the duties and fix the compensation of such executive secretary, clerks, investigators and assistants, subject to the general laws of the state.

(c) The commission shall adopt a seal by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this article shall be open to public inspection under reasonable rules and regulations as shall be prescribed by the commission.

(d) The commission shall be terminated pursuant to the provisions of article ten, chapter four of this code on the first day of July, one thousand nine hundred eighty-eight, unless sooner terminated or unless continued or reestablished pursuant to this article and chapter.

§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.

1 In addition to proof of honesty, trustworthiness, good character and good reputation of any applicant for a
license, the applicant shall submit to a written exam-
ination to be conducted by the commission which shall 
include reading, writing, spelling, elementary arith-
etic, a general knowledge of the statutes of this state 
relating to real property, deeds, mortgages, agreements 
of sale, agency contract, leases, ethics, appraisals and 
the provisions of this article: Provided, That any person 
who has been actively engaged in the real estate 
business as a real estate broker or real estate salesman 
within the year preceding the effective date of this 
article and is thus engaged in this state at the time this 
article goes into effect, may secure a license as a real 
estate broker or a salesman without an examination: 
Provided, however, That such person shall make appli-
cation to the commission for registration within ninety 
days after the effective date of this article. The 
examination for a broker's license shall differ from the 
examination for a salesman's license in that it shall be 
of a more exacting nature and require higher standards 
of knowledge of real estate. The commission shall 
conduct examinations at such times and places as it 
shall determine.

(a) In event the license of any real estate broker or 
salesman shall be revoked by the commission, subse-
quent to the enactment of this article, no new license 
shall be issued to such person unless he complies with 
the provisions of this article.

(b) No person shall be permitted or authorized to act 
as a real estate broker until he has qualified by 
examination, except as hereinbefore provided. Any 
individual who fails to pass the examination upon two 
occasions shall be ineligible for a similar examination 
until after the expiration of three months from the time 
such individual took the last examination and then only 
upon making application as in the first instance.

(c) If the applicant is a partnership, association or 
corporation said examination shall be submitted to on 
behalf of said partnership, association or corporation by 
the member or officer thereof who is designated in the 
application as the person to receive a license by virtue 
of the issuing of a license to the partnership, association
or corporation.

(d) Upon satisfactorily passing such examination and upon complying with all other provisions of law and conditions of this article a license shall thereupon be issued to the successful applicant and upon receiving such license is authorized to conduct the business of a real estate broker or real estate salesman in this state.

A person who has qualified for a real estate license as provided above is considered to be a professional in his trade.

§47-12-9. License fees; annual registration; fees for additional offices, charge for change of location and for duplicate or transfer of licenses.

To pay for the maintenance and operation of the office of the commission and the enforcement of this article, the commission shall charge the following fees:

(a) Examination fee—twenty-five dollars, with no additional fee for second examination.

(b) Investigation fee—ten dollars.

(c) Broker's license—fifty dollars.

(d) Salesperson's license—twenty-five dollars.

(e) Broker's renewal fee—fifty dollars, payable by the thirtieth day of June of each year.

(f) Salesperson's renewal fee—twenty-five dollars, payable by the thirtieth day of June of each year.

(g) Branch office fee—fifty dollars.

(h) Renewal of branch office license—five dollars.

(i) Transfer of salesperson's license—ten dollars.

(j) Duplicate license or certification—five dollars.

(k) Change of name—five dollars.

(l) Change of office—ten dollars.

Willful failure to pay any of the fees required under this article is just cause for revocation of or refusal to
§47-12-12. Notice of hearing on complaint; conduct of hearing.

Upon complaint initiated by the commission or filed with it, the licensee shall be given ten days' written notice of hearing upon the charges filed, together with a copy of the complaint. This applicant or licensee shall have an opportunity to be heard thereon in person, to offer testimony in his behalf and to examine the witnesses appearing in connection with the complaint. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code, and all rights, procedures and duties contained therein shall be observed.

§47-12-13. Appeals.

Any applicant or licensee, or person aggrieved, shall have the right of appeal from any adverse ruling, order, or decision of the commission to the circuit court of the county where the hearing was held, within thirty days from the service of notice of the action of the commission upon the parties in interest.

(a) Notice of appeal shall be filed in the office of the clerk of the circuit court wherein the hearing was held, who shall issue a writ of certiorari directed to the commission, commanding it, within ten days after service thereof, to certify to such court, its entire record in the matter in which the appeal has been taken. The appeal shall thereupon be heard, in due course, by said court, which shall review the record and make its determination of the cause between the parties.

(b) In the event an appeal is taken by a licensee or applicant, such an appeal shall not stay enforcement of the commission's order or decision or act as a supersedeas thereof unless otherwise ordered by the circuit court.

(c) Any person taking an appeal shall post a satisfactory bond in the amount of two hundred dollars for the payment of any costs which may be adjudged against him.
25 (d) Appeal may be taken from the circuit court to the 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 RETIREMENT ACT.

§5-10-22b. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of less than seven thousand five hundred dollars annually on the effective date of this section shall receive, upon application, a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit: Provided, That the effective date of retirement for such annuitant was prior to the first day of July, one thousand nine hundred seventy-nine, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, "effective date of retirement" means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.

2 Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of eighteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article, shall not exceed seven thousand five hundred dollars annually.

3 Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to the first day of July, one thousand nine hundred eighty-five, or any annuitant made newly eligible for
receipt of such supplemental benefit on such date, shall receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after the first day of July, one thousand nine hundred eighty-five, and irrespective of the maximum total annuity proviso and limitation of seven thousand five hundred dollars annually. In any fiscal year in which pay increases are granted by the Legislature to active public employees, there may also be given an increase in retirement benefits for retired public employees, if funding is available for this purpose.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

On or after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

§5-10-48. Reemployment after retirement; option for holder of elected public office.

(a) In the event a retirant becomes employed by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to such additional employment, said annuity to be computed according to section twenty-two of this article. A retirant may accept temporary employment from a participating employer so long as he or she does not receive compensation in excess of six thousand dollars.

(b) In the event a retirant is elected to a public office or appointed to hold an elected public office, he or she has the
option, notwithstanding subsection (a) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding such public office, in addition to the salary he or she may be entitled to as such officeholder; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (a) of this section.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


§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-24. Disposition of accumulated contributions upon cessation of membership.

§18-7A-26h. Supplemental benefits for certain annuitants.


"Teacher member" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the
department of corrections, the department of health or the
department of human services; and (l) employees of the
state board of school finance, if such person was formerly
employed as a teacher in the public schools.
"Nonteaching member" means any person, except a
teacher member, who is regularly employed for full-time
service by (a) any county board of education, (b) the state
board of education, (c) the West Virginia board of regents or
(d) the teachers retirement board.
"Members of the administrative staff of the public
schools" means deans of instruction, deans of men, deans of
women, and financial and administrative secretaries.
"Members of the extension staff of the public schools"
means every agricultural agent, boys' and girls' club agent,
and every member of the agricultural extension staff whose
work is not primarily stenographic, clerical or secretarial.
"Retirement system" means the state teachers retirement
system provided for in this article.
"Present teacher" means any person who was a teacher
within the thirty-five years beginning July one, one
thousand nine hundred thirty-four, and whose membership
in the retirement system is currently active.
"New entrant" means a teacher who is not a present
teacher.
"Regularly employed for full-time service" means
employment in a regular position or job throughout the
employment term regardless of the number of hours worked
or the method of pay.
"Employment term" means employment for at least ten
months, a month being defined as twenty employment days.
"Present member" means a present teacher who is a
member of the retirement system.
"Total service" means all service as a teacher while a
member of the retirement system since last becoming a
member and, in addition thereto, credit for prior service, if
any.
"Prior service" means all service as a teacher completed
prior to July first, one thousand nine hundred forty-one,
and all service of a present member who was employed as a
teacher, and did not contribute to a retirement account
because he was legally ineligible for membership during
such service.
"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided herein, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.

"Accumulated contributions" means all deposits and all deductions from the earnable compensation of a contributor minus the total of all supplemental fees deducted from his compensation.

"Regular interest" means interest at three percent compounded annually, or a higher earnable rate if approved by the retirement board.

"Refund interest" means interest compounded annually at a rate of three percent.

"Employer" means the agency of and within the state which has employed or employs a member.

"Contributor" means a member of the retirement system who has an account in the teachers accumulation fund.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Refund beneficiary" means the estate of a deceased contributor, or such person as he shall have nominated as beneficiary of his contributions by written designation duly executed and filed with the retirement board.

"Earnable compensation" means the full compensation actually received by members for service as teachers whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be deemed a part of earnable compensation for such members whose allowances were approved by the teachers retirement board and contributions to the teachers retirement system were made, in accordance therewith, on or before the first day of July, one thousand nine hundred eighty.

"Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

"Member" means a member of the retirement system.

"Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state.
"Deposit" means a voluntary payment to his account by a member. The masculine gender shall be construed so as to include the feminine. Age in excess of seventy years shall be deemed to be seventy years.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

The membership of the retirement system shall consist of the following:

(a) New entrants, whose membership in the system shall be compulsory upon employment as teachers and nonteachers.

(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia public employees retirement system, the judge's retirement system, or the retirement system of the department of public safety or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter.

The membership of any person in the retirement system shall cease:

(1) Upon the withdrawal of accumulated contributions after the cessation of service, or (2) upon retirement, or (3) at death, or (4) if service amounts to fewer than five years in any period of ten consecutive years.

Any former member of the retirement system who has withdrawn accumulated contributions but subsequently reenters the retirement system shall be permitted to repay to the retirement fund the amount withdrawn, plus interest at a rate of six percent, compounded annually from the date of withdrawal to the date of repayment: Provided, That no such repayment may be made until the former member has completed two years of contributory service after reentry; and such member shall be accorded all the rights to prior service and experience as were held at the time of withdrawal of such accumulated contributions: Provided, however, That no withdrawn service may be reinstated that has been transferred to another retirement system from which the member is currently or will in the future draw
benefits based on the same service. The interest paid shall be deposited in the reserve fund.

No member shall be eligible for prior service credit unless he is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this paragraph shall be deemed eligible for prior service pension upon retirement.

§18-7A-17. Statement and computation of teachers' service.

Under such rules and regulations as the retirement board may adopt, each teacher shall file a detailed statement of his length of service as a teacher for which he claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing such service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a Federal Selective Service Act was in effect. For purposes of this section, "armed forces" shall include Women's Army Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women's Reserve and other similar units officially parts of the military service of the United States. Such military service shall be deemed equivalent to public school teaching, and the salary equivalent for each year of such service shall be the actual salary of the member as a teacher for his first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement.

For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of such state or territory, the retirement board shall grant credit to the member:

Provided, That the member shall pay to the system double the amount he contributed during the first full year of
current employment, times the number of years for which
credit is granted, plus interest at a rate to be determined by
the retirement board. Such interest shall be deposited in the
reserve fund and service credit so granted at the time of
retirement shall not exceed the lesser of ten years or fifty
percent of the member's total service as a teacher in West
Virginia. Any transfer of out-of-state service, as provided in
this article, shall not be used to establish eligibility for a
retirement allowance and the retirement board shall grant
credit for such transferred service as additional service
only: Provided, however, That a transfer of out-of-state
service shall be prohibited if such service is used to obtain a
retirement benefit from another retirement system:
Provided further, That salaries paid to members for service
prior to entrance into the retirement system shall not be
used to compute the average final salary of such member
under the retirement system.

Service credit for members or retired members shall not
be denied on the basis of minimum income regulations
promulgated by the teachers retirement board: Provided,
that the member or retired member shall pay to the system
the amount he would have contributed during the year or
years of public school service for which credit was denied as
a result of such minimum income regulations of the teachers
retirement board.

No members shall be deemed absent from service while
serving as a member or employee of the Legislature of the
state of West Virginia during any duly constituted session of
that body or while serving as an elected member of a county
commission during any duly constituted session of that
body: Provided, That the member makes contributions to
the system equal to what would have been contributed
during the period of absence had he performed his duties.

No member shall be deemed absent from service as a
teacher while serving on leave of absence as an officer with
a statewide professional teaching association, or who has
served in such capacity, and no retired teacher, who served
on such leave of absence while a member, shall be deemed to
have been absent from service as a teacher by reason of such
service on leave of absence: Provided, That the period of
service credit granted for such service on leave of absence
shall not exceed two years: Provided, however, That a
member or retired teacher who is serving or has served as an
officer of a statewide professional teaching association
shall make deposits to the teachers retirement board, for the
time of any such absence, in an amount double the amount
which he would have contributed in his regular assignment
for a like period of time.

The teachers retirement board shall grant service credit
to any former or present member of the West Virginia public
employees retirement system who has been a contributing
member for more than three years, for service previously
credited by the public employees retirement system, and (1)
shall require the transfer of the member’s contributions to
the teachers retirement system or (2) shall require a
repayment of the amount withdrawn any time prior to the
member’s retirement: Provided, That there shall be added
by the member to the amounts transferred or repaid under
this paragraph an amount which shall be sufficient to equal
the contributions he would have made had the member been
under the teachers retirement system during the period of
his membership in the public employees retirement system
plus interest at a rate of six percent compounded annually
from the date of withdrawal to the date of payment. The
interest paid shall be deposited in the reserve fund.

For service as a teacher in an elementary or secondary
parochial school, located within this state and fully
accredited by the West Virginia department of education,
the retirement board shall grant credit to the member:
Provided, That the member shall pay to the system double
the amount contributed during the first full year of current
employment, times the number of years for which credit is
granted, plus interest at a rate to be determined by the
retirement board. Such interest shall be deposited in the
reserve fund and service so granted at the time of retirement
shall not exceed the lesser of ten years or fifty percent of the
member’s total service as a teacher in the West Virginia
public school system. Any transfer of parochial school
service, as provided in this section, may not be used to
establish eligibility for a retirement allowance and the
board shall grant credit for such transfer as additional
service only: Provided, however, That a transfer of
parochial school service is prohibited if such service is used
to obtain a retirement benefit from another retirement system.

If a member is not eligible for prior service credit or pension as provided in this article, then his prior service shall not be deemed a part of his total service.

A member who withdrew from membership shall be permitted to regain his former membership rights as specified in section thirteen of this article only in case he has served two years since his last withdrawal.

Subject to the above provisions, the board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible therefor under the provisions of this article.

Such certificates shall state the length of such prior service credit, but in no case shall the prior service credit exceed forty years.


Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

(a) A contributor who withdraws from service for any cause other than death or retirement shall, upon application, be paid his accumulated contributions plus refund interest up to the end of the fiscal year preceding the year in which application is made, but in no event shall interest be paid beyond the end of five years following the year in which the last contribution was made: Provided, That such contributor, at the time of application, is then no longer under contract, verbal or otherwise, to serve as a teacher;

(b) If a contributor with fewer than five years of established service does not apply for the refund of his accumulated contributions within five years from the year in which he quits service, then his accumulated contributions plus refund interest, up to and including the fifth year, shall be returned to such member or to his legal representative; or

(c) If such contributor has completed twenty years of total service, he may elect to receive at retirement age an annuity which shall be computed as provided in this article: Provided, That if such contributor has completed at least
five, but fewer than twenty years of total service in this
state, he may elect to receive at age sixty-two, an annuity
which shall be computed as provided in this article. The
contributor must notify the retirement board in writing
concerning such election. If such contributor has completed
fewer than five years of service in this state, he shall be
subject to the provisions as outlined in subsection (a) or (b)
above.

Benefits upon the death of a contributor prior to
retirement under the provisions of this article shall be paid
as follows:

(1) If the contributor was at least fifty years old, and if
his total service as a teacher was at least twenty-five years
at the time of his death, then the surviving spouse of the
deceased, provided said spouse is designated as the sole
refund beneficiary, shall be eligible for an annuity which
shall be computed as though the deceased were actually a
retired teacher at the time of death, and had selected a
survivorship option which pays such spouse the same
monthly amount which would have been received by the
deceased; or

(2) If the facts do not permit payment under the
preceding paragraph (1), then the following sum shall be
paid to the refund beneficiary of the contributor: His
accumulated contributions with refund interest up to the
year of his death plus the amount of his accumulated
contributions. The latter sum shall emanate from the
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
absence from service as a teacher, his accumulated
contributions with refund interest up to and including the
fiscal year in which his membership ceased, shall be
returned to him, or to his legal representative. Five years
after cessation of membership, if the contributor or his legal
representative cannot be found, his accumulated
contributions with refund interest shall be forfeited to the
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
credited service year, in which event the same shall constitute a full year of service credit.

On or after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

CHAPTER 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.
1 The legislative purpose for this enactment is to enable this state, its agencies and political subdivisions, and political subdivisions of counties and municipalities to pick-up and pay the contributions which their employees are by law required to make to the respective retirement system in which the public employee is a member.

§5-10C-2. Construction and effect of article.
This article shall apply to all retirement plans for employees sponsored by any public employer in this state. This article shall, on and after the first day of July, one thousand nine hundred eighty-six, be read in pari materia and harmonized with the provisions of this code creating any retirement system for public employees.

§5-10C-3. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the members' deposit fund and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the member's participating public employer, plus applicable interest thereon.

(2) "Board of trustees" means, as appropriate: The board of trustees of the West Virginia public employees retirement system created in article ten, chapter five of this code; the retirement board of the West Virginia department of public safety death, disability and retirement fund created in section twenty-six, article two, chapter fifteen of this code; the retirement board of the state teachers and board of regents retirement system created in article seven-a, chapter eighteen of this code; the governing board of the board of regents supplemental and additional retirement plans created in section four-a, article twenty-three, chapter eighteen of this code; or the retirement board of the judges' retirement system created in article nine, chapter fifty-one of this code.

(3) "Employee" means any person, whether appointed, elected, or under contract, providing services for a public employer, for which compensation is paid and who is a member of the retirement system.

(4) "Member" means any employee who is included in a retirement system.
(5) "Member contributions" means, as appropriate:
the contributions required by section twenty-nine, article ten, chapter five of this code, from employees who are members of the West Virginia public employees retirement system; the contributions required by section twenty-six, article two, chapter fifteen of this code, from employees who are members of the West Virginia department of public safety death, disability and retirement fund; the contributions required by section fourteen, article seven-a, chapter eighteen of this code, from employees who are members of the state teachers retirement system; the contributions authorized by section fourteen-a, article seven-a, chapter eighteen or by section four-a, article twenty-three, chapter eighteen, from employees who are members of the West Virginia board of regents retirement plans; or the contributions required by section four, article nine, chapter fifty-one of this code, from employees who are members of the judges' retirement system.

(6) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and shall include any agency created by rule of the supreme court of appeals having full-time employees, which for the purpose of this article shall be deemed a department of state government, and county boards of education with respect to teachers employed by them; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system.

(7) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by, or approved by the department of health
for the provision of community health or mental retardation services, and which is supported in part by state, county or municipal funds.

(8) "Retirement system" means, as appropriate: The West Virginia public employees retirement system created in article ten, chapter five of this code; the West Virginia department of public safety death, disability and retirement fund created in sections twenty-six through thirty-eight, article two, chapter fifteen of this code; the state teachers retirement system created in article seven-a, chapter eighteen of this code; the West Virginia board of regents retirement plans created in section fourteen-a, article seven-a, chapter eighteen and section four-a, article twenty-three, chapter eighteen of this code; or the judges' retirement system created in article nine, chapter fifty-one of this code.

(9) "Teacher" shall have the meaning ascribed to it in section three, article seven-a, chapter eighteen of this code.

§5-10C-4. Pick-up of members' contributions by participating public employers.

(a) The state of West Virginia for its public employees and county board of education for its teachers shall pick-up and pay the contributions which such employees are required by law to make to the retirement system in which they are a member for all compensation earned by its member employees after the thirtieth day of June, one thousand nine hundred eighty-six. Any other political subdivision that is a participating public employer in the West Virginia public employees retirement system may, by a majority vote of its governing body, elect to pick-up and pay the contributions of their employees required by section twenty-nine, article ten of this chapter, for all compensation earned by its member employees after the thirtieth day of June, one thousand nine hundred eighty-six, or such later date specified by the governing body. It shall be the duty of the clerk or secretary of each such political subdivision electing to pick-up and pay the employee contributions 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
amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating public employer.

§5-10C-5. Savings clause.

In enacting this article, it is the intent of the Legislature that the retirement plan created pursuant to this article and article ten, chapter five; article two, chapter fifteen; article seven-a, chapter eighteen and article nine, chapter fifty-one of this code shall qualify under section 401 of the Internal Revenue Code of 1954, as amended, and that the member contributions picked up by the participating public employer qualify under subsection (h), section 414 of the Internal Revenue Code of 1954, as amended. Should the United States Internal Revenue Service not approve of certain sections or phraseology of certain sections of this article as being in compliance with the statutes or rules governing the Internal Revenue Service, the respective boards of trustees, in the adoption of the deferred compensation plan, shall adopt such terminology with respect to such 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.]
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.

"The State Office Building Commission of West Virginia," heretofore created, shall continue in existence but on and after February nine, one thousand nine hundred sixty-six, shall be known and designated as "The State Building Commission of West Virginia" and shall continue as a body corporate and as an agency of the state of West Virginia. On and after the date aforesaid, the commission shall consist of the governor, attorney general, state treasurer and four additional members to be appointed by the governor by and with the advice and consent of the Senate. The terms of office for said members to be appointed by the governor shall be four years, except that the terms of office of the first four members so appointed by the governor shall be for one, two, three and four years respectively. No more than three of such members so appointed by the governor shall be members of the same political party,
nor shall any of said members be members or employees
of the executive, legislative or judicial branches of
government of West Virginia or any political subdivi-
sion thereof. The governor shall be chairman of the
commission. The secretary of state shall be a member
of the commission and serve as its secretary, but shall
not have the right to vote upon matters before the
commission. All members of the commission shall be
citizens and residents of this state. The members of the
commission shall be paid or reimbursed for their
necessary expenses incurred under this article, but shall
receive no compensation for their services as members
or officers of the commission: Provided, That each
member of the commission appointed by the governor
shall, in addition to such reimbursement for necessary
expenses receive a per diem of thirty-five dollars for
each day or substantial portion thereof that he is
engaged in the work of the commission. Such expenses
and per diem shall be paid solely from funds provided
under the authority of this article, and the commission
shall not proceed to exercise or carry out any authority
or power herein given it to bind said commission beyond
the extent to which money has been provided under the
authority of this article. On or before the fifteenth day
of each month, the commission shall prepare and
transmit to the president and minority leader of the
Senate and the speaker and the minority leader of the
House of Delegates a report covering the activities of the
said commission for the preceding calendar month.

After having conducted a performance and fiscal
audit through its joint committee on government
operations, pursuant to section nine, article ten, chapter
four of this code, the Legislature hereby finds and
declares that the state building commission should be
continued and reestablished. Accordingly, notwithstand-
ing the provisions of section four, article ten, chapter
four of this code, the state building commission shall
continue to exist until the first day of July, one thousand
nine hundred ninety-two.

§5-6-4. Powers of commission.

The commission shall have power:
(1) To sue and be sued, plead and be impleaded;
(2) To have a seal and alter the same at pleasure;
(3) To contract to acquire and to acquire, in the name of the commission or of the state, by purchase, lease, lease-purchase, or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish such purposes;
(4) To acquire, hold and dispose of personal property for its corporate purposes;
(5) To make bylaws for the management and regulation of its affairs;
(6) With the consent of the attorney general of the state of West Virginia, to use the facilities of his office, assistants and employees in all legal matters relating to or pertaining to the commission;
(7) To appoint officers, agents and employees, and fix their compensation;
(8) To make contracts, and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by, this article;
(9) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interests will be best served;
(10) To construct a building or buildings on real property, which it may acquire, or which may be owned by the State of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to such consent and approval of the city of Charleston in any case as may be necessary; and, in addition, to acquire or construct a warehouse, including office space therein, in Kanawha county for the West Virginia alcohol beverage control commissioner, and equip and furnish the same; and to acquire or construct, through lease, purchase, lease-purchase, or bond financing, hospitals or other facilities, buildings, or additions or renovations to buildings as may be neces-
sary for the safety and care of patients, inmates and
guests at facilities under the jurisdiction of and
supervision of the department of health and at institu-
tions under the jurisdiction of the department of
corrections; and to formulate and program plans for the
orderly and timely capital improvement of all of said
hospitals and institutions and the state capitol buildings;
and to construct a building or buildings in Kanawha
county to be used as a general headquarters by the
department of public safety to accommodate that
department's executive staff, clerical offices, technical
services, supply facilities and dormitory accommoda-
tions; and to develop, improve and expand state parks
and recreational facilities to be operated by the
department of natural resources; and to establish one or
more systems or complexes of buildings and projects
under control of the commission; and, subject to prior
agreements with holders of bonds previously issued, to
change the same from time to time, in order to facilitate
the issuance and sale of bonds of different series on a
parity with each other or having such priorities between
series as the commission may determine; and to acquire
by purchase, eminent domain or otherwise all real
property or interests therein necessary or convenient to
accomplish the purposes of this subdivision;

(11) To maintain, construct and operate a project
authorized hereunder;

(12) To charge rentals for the use of all or any part
of a project or buildings at any time financed, con-
structed, acquired or improved in whole or in part with
the proceeds of sale of bonds issued pursuant to this
article, subject to and in accordance with such agree-
ments with bondholders as may be made as hereinafter
provided;

(13) To issue negotiable bonds and to provide for the
rights of the holders thereof;

(14) To accept and expend any gift, grant or contri-
bution of money to, or for the benefit of, the commission,
from the state of West Virginia or any other source for
any or all of the purposes specified in this article or for
any one or more of such purposes as may be specified in connection with such gift, grant or contribution;

(15) To enter on any lands and premises for the purpose of making surveys, soundings and examinations;

(16) To invest in United States government obligations, on a short-term basis, any surplus funds which the commission may have on hand pending the completion of any project or projects; and

(17) To do all things necessary or convenient to carry out the powers given in this article.

The rights and powers set forth in subdivision (10) of this section shall not be construed as in derogation of any rights and powers now vested in the West Virginia alcohol beverage control commissioner, the department of mental health, the commissioner of public institutions or the department of natural resources.

§5-6-7. Contracts with commission to be secured by bond; competitive bids required for contracts exceeding five thousand dollars.

The commission shall construct a project pursuant to a contract or contracts. Every such contract shall be secured by a bond meeting the requirements of section thirty-nine, article two, chapter thirty-eight of this code.

No contract or contracts for the construction, remodeling, renovation or repair of any building or buildings or any approaches, structures or facilities incidental thereto, or for the equipping and furnishing of any building or buildings, when the anticipated expenditure therefor will exceed the sum of five thousand dollars, shall be entered into except upon the basis of competitive sealed bids. Such bids shall be obtained by public notice soliciting such bids published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which any such contract is to be performed. The publication shall be completed at least fourteen days prior to the final date for the submission of bids. The
commission may in addition to such publication also
solicit sealed bids by sending requests by mail to
prospective bidders. The contract shall be awarded to
the lowest responsible bidder, unless any and all bids
are rejected, in which event new bids shall be sought
by again publishing notice as aforesaid. Any bid, with
the name of the bidder, shall be entered on a record and
each record, with the successful bid indicated thereon,
shall, after the award of any contract, be open to public
inspection in the office of the secretary of the commis-
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.

The commission is hereby empowered to raise the cost
of a project, as defined in this article, by the issuance
of state building revenue bonds of the state, the
principal of and interest on which bonds shall be
payable solely from the special fund herein provided for
such payment. Subject to the proceedings pursuant to
which any bonds outstanding were authorized and
issued pursuant to this article, the commission shall
pledge the moneys in such special fund, except such part
of the proceeds of sale of any bonds to be used to pay
the cost of a project, for the payment of the principal
of and interest on bonds issued pursuant to this article,
such pledge to apply equally and ratably to separate
series of bonds or upon such priorities as the commission
shall determine. Such bonds shall be authorized by
resolution of the commission which shall recite an
estimate by the commission of such cost, and shall
provide for the issuance of bonds in an amount suffi-
cient, when sold as hereinafter provided, to produce
such cost, less the amount of any funds, grant or grants,
gift or gifts, contribution or contributions received, or
in the opinion of the commission expected to be received,
from the United States of America or from any other
source. The acceptance by the commission of any and all
such funds, grants, gifts and contributions, whether in
money or in land, labor or materials, is hereby expressly
authorized. All such bonds shall have and are hereby
declared to have all the qualities of negotiable instru-
ments. Such bonds shall bear interest at not more than
twelve percent per annum, payable semiannually, and
shall mature in not more than forty years from their
date or dates, and may be made redeemable at the
option of the state, to be exercised by the commission,
at such price and under such terms and conditions, all
as the commission may fix prior to the issuance of such
bonds. The commission shall determine the form of such
bonds, including coupons, if any, to be attached thereto
to evidence the right of interest payments, which bonds
shall be signed by the chairman and secretary of the
commission, under the great seal of the state, attested
by the secretary of state, and the coupons, if any,
attached thereto shall bear the facsimile signature of the
chairman of the commission. In case any of the officers
whose signatures appear on the bonds or coupons issued
as hereinbefore authorized shall cease to be such officers
before the delivery of such bonds, such signatures shall
nevertheless be valid and sufficient for all purposes the
same as if they had remained in office until such
delivery. The commission shall fix the denominations of
such bonds, the principal and interest of which shall be
payable at the office of the treasurer of the state of West
Virginia, at the capitol of the state, or, at the option of
the holder, at some bank or trust company within or
without the state of West Virginia to be named in the
bonds, in such medium as may be determined by the
commission. The bonds and interest thereon shall be
exempt from taxation by the state of West Virginia, or
any county or municipality therein. The commission
may provide for the registration of such bonds in the
name of the owners as to principal alone, and as to both
principal and interest under such terms and conditions
as the commission may determine, and shall sell such
bonds in such manner as it may determine to be for the
best interest of the state, taking into consideration the
financial responsibility of the purchaser, and the terms
and conditions of the purchase, and especially the
availability of the proceeds of the bonds when required
for payment of the costs of the project, such sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor. The proceeds of such bonds shall be used solely for the payment of the cost of the project for which bonds were issued, and shall be deposited and checked out as provided by section five of this article, and under such further restrictions, if any, as the commission may provide. If the proceeds of bonds issued for a project shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for payment of the principal and interest of such bonds. Such fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. Prior to the preparation of definitive bonds, the commission may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Notwithstanding the provisions of sections nine and ten, article six, chapter twelve of this code, revenue bonds issued under the authority herein granted shall be eligible as investments for the workers' compensation fund, teachers retirement fund, department of public safety death, disability and retirement fund, West Virginia public employees retirement system and as security for the deposit of all public funds. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article, or by the constitution of the state. The aggregate amount of all issues of bonds outstanding at one time for all projects authorized under the provisions of this article shall not exceed sixty-two million five hundred thousand dollars including the renegotiation, reissuance or refinancing of any such bonds. No project, construction or acquisition, in connection with which bonds are to be issued, shall
be initiated by the commission unless and until the
Legislature, through enactment of general law, ap-
proves the purpose, amount of bonds to be issued, and
the total cost for such project, construction or
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-
ing more than fifteen pounds pressure per square inch
(except boilers on railroad locomotives subject to inspec-
tion under federal laws, portable boilers used for agricul-
tural purposes, boilers on automobiles, boilers of steam
fire engines brought into the state for temporary use in
times of emergency for the purpose of checking conflagra-
tions, boilers used in private residences which are used
solely for residential purposes, any sectional boilers, small
portable boilers commonly used in the oil and gas indus-
try about their wells and tool houses, and boilers under
the jurisdiction of the United States) in this state shall
first obtain a permit to operate a steam boiler from the
commissioner of labor, or from an inspector working
under his jurisdiction.
Applications for permits to operate a steam boiler must be accompanied by a sworn statement made by the owner or operator of such boiler, setting forth the condition of the boiler and its appurtenances at which time, if the facts disclosed by such statement meet the safety requirements established under this article, the commissioner of labor shall issue a temporary permit, which shall be valid until such boiler has been inspected by a boiler inspector authorized by the state commissioner of labor; thereupon, if the boiler meets the safety requirements established under this article, the commissioner of labor shall issue an annual permit to operate such steam boiler: Provided, that boilers which are insured by an insurance company operating in this state and which are inspected by such insurance company's boiler inspector shall not be subject to inspection by the state department of labor, during any twelve months' period during which an inspection is made by the insurance company's boiler inspector.

The commissioner of labor or state boiler inspector shall have the authority to inspect steam boilers in this state. To carry out the provisions of this section, the commissioner of labor shall prescribe rules and regulations under which boilers may be constructed and operated, according to their class. The commissioner of labor shall be authorized to revoke any permit to operate a steam boiler if the rules prescribed by the commissioner of labor, or his authorized representative, are violated or if a condition shall prevail which is hazardous to the life and health of persons operating or employed at or around the boiler. Any person or corporation who shall operate a steam boiler for which a permit is necessary under the provisions of this section, without first obtaining such permit to operate a steam boiler, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars. Every day a steam boiler requiring a permit to operate is operated without such permit shall be considered a separate offense.

The commissioner may charge such fee as he determines reasonable for the inspection of boilers by the department of labor boiler inspector of the commissioner's authorized
boiler inspection agency, for the processing of inspection
reports from insurance companies, for issuing annual per-
mits to operate boilers and for commissioning insurance
company boiler inspectors. Such fees shall be established
by a rule promulgated in accordance with the provisions
of chapter twenty-nine-a of this code. No fee shall be
charged for the inspection of boilers used on mobile
equipment or vehicles used for occasional entertainment
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:
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 authority to make disposition of commodities or expendable commodities now owned or in the future acquired by the state when, in the opinion of the director, any such commodities are or become obsolete or unusable or are not being used or should be replaced.

7 The director shall determine what commodities or expendable commodities should be disposed of and he shall
make such disposition in the manner which in his opinion will be most advantageous to the state, either by trans-
ferring the particular commodities or expendable com-
modities between departments, by selling such commodi-
ties to county commissions, county boards of education, 
municipalities, public service districts, county building 
commissions, airport authorities, parks and recreation 
commissions, nonprofit domestic corporations qualified as 
tax exempt under section 501 (c) (3) of the Internal 
Revenue Code of 1954, as amended, and volunteer fire 
departments in this state, when such volunteer fire depart-
ments have been held exempt from taxation under section 
501 (c) of the United States Internal Revenue Code, by 
trading in such commodities as a part payment on the 
purchase of new commodities, or by sale thereof to the 
highest bidder by means of public auctions or sealed 
bids, after having first advertised the time, terms and 
place of such sale as a Class II legal advertisement in 
compliance with the provisions of article three, chapter 
fifty-nine of this code, and the publication area for such 
publication shall be the county wherein the sale is to be 
conducted. The sale may also be advertised in such other 
advertising media as the director may deem advisable. 
The director may sell to the highest bidder or to any one 
or more of the highest bidders, if there is more than one, 
or, if in his opinion the best interest of the state will be 
served, reject all bids.

Upon the transfer of commodities or expendable com-
modities between departments, or upon the sale thereof 
to an eligible organization described above, the director 
shall set the price to be paid by the receiving eligible 
organization, with due consideration given to current 
market prices.

The director may sell expendable, obsolete or unused 
motor vehicles owned by the state to an eligible organi-
zation, other than volunteer fire departments. In addition, 
the director may sell expendable, obsolete or unused 
motor vehicles owned by the state with a gross weight in 
excess of four thousand pounds to an eligible volunteer 
fire department. The director, with due consideration
given to current market prices, shall set the price to be
paid by the receiving eligible organization, for motor
vehicles sold pursuant to this provision: Provided, That
the sale price of any motor vehicle sold to an eligible
organization shall not be less than the "average loan"
value, as published in the most recent available eastern
edition of the National Automobile Dealer's Association
(N.A.D.A.) Official Used Car Guide, if such a value is
available, unless the fair market value of the vehicle is
less than the N.A.D.A. "average loan" value, in which
case the vehicle may be sold for less than the "average
loan" value. Such fair market value must be based on a
thorough inspection of the vehicle by the director or his
representative who shall consider the mileage of the ve-
hicle, and the condition of the body, engine and tires as
indicators of its fair market value. If no such value is
available, the director shall set the price to be paid by the
receiving eligible organization with due consideration
given to current market prices. The duly authorized rep-
resentative of such eligible organization, for whom such
motor vehicle or other similar surplus equipment is pur-
chased or otherwise obtained, shall cause ownership and
proper title thereto to be vested only in the official name
of the authorized governing body for whom the purchase
or transfer was made. Such ownership or title, or both,
shall remain in the possession of that governing body and
be nontransferable for a period of not less than one year
from the date of such purchase or transfer. Resale or
transfer of ownership of such motor vehicle or equipment
prior to an elapsed period of one year may be made only
by reason of certified unserviceability.

The director shall report to the legislative auditor,
semiannually, all sales of commodities or expendable
commodities made during the preceding six months to
eligible organizations. The report shall include a descrip-
tion of the commodities sold, the price paid by the eligible
organization, which received the commodities; and the
report shall show to whom each commodity was sold.

The proceeds of such sales or transfers shall be depos-
ited in the state treasury to the credit on a pro rata basis
of the fund or funds out of which the purchase of the
particular commodities or expendable commodities was
made: Provided, That the director may charge and assess
fees reasonably related to the costs of care and handling
with respect to the transfer, warehousing, sale and dis-
tribution of state property disposed of or sold pursuant
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 certifica-
tion 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-
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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.

(a) On or before the first day of May in each year a return in writing shall be filed with the board of public works: (1) By the owner or operator of every railroad, wholly or in part within this state; (2) by the owner or operator of every railroad bridge upon which a separate toll or fare is charged; (3) by the owner or operator of every car or line of cars used upon any railroad within the state for transportation or accommodation of freight or passengers, other than such owners or operators as may own or operate a railroad within the state; (4) by the owner or operator of every express company or express line, wholly or in part within this state, used for the transportation by steam or otherwise of freight and other articles of commerce; (5) by the owner or operator of every pipeline, wholly or in part within this state, used for the transportation of oil or gas or water, whether such oil or gas or water be owned by such
owner or operator or not, or for the transmission of electrical or other power, or the transmission of steam or heat and power or of articles by pneumatic or other power; (6) by the owner or operator of every telegraph or telephone line, wholly or in part within this state, except private lines not operated for compensation; (7) by the owner and operator of every gas company and electric lighting company furnishing gas or electricity for lighting, heating or power purposes; (8) by the owner or operator of hydroelectric companies for the generation and transmission of light, heat or power; (9) by the owner or operator of water companies furnishing or distributing water; and (10) by the owner or operator of all other public service corporations or persons engaged in public service business whose property is located wholly or in part within this state.

(b) The words “owner or operator,” as applied herein to railroad companies, shall include every railroad company incorporated by or under the laws of this state for the purpose of constructing and operating a railroad, or of operating part of a railroad within this state, whether such railroad or any part of it be in operation or not; and shall also include every other railroad company, or persons or associations of persons, owning or operating a railroad or part of a railroad in this state on which freight or passengers, or both, are carried for compensation. The word “railroad,” as used herein includes every street, city, suburban or electric or other railroad or railway.

(c) The words “owner or operator,” as applied herein to express companies, shall include every express company incorporated by or under the laws of this state, or doing business in this state, whether incorporated or not, and any person or association of persons, owning or operating any express company or express line upon any railroad or otherwise, doing business partly or wholly within this state.

(d) Such return shall be signed and sworn to by such owner or operator if a natural person, or, if such owner or operator shall be a corporation, shall be signed and sworn to by its president, vice president, secretary or
principal accounting officer.

(e) The return required by this section of every such owner or operator shall cover the year ending on the thirty-first day of December, next preceding, and shall be made on forms prescribed by the board of public works, which board is hereby invested with full power and authority and it is hereby made its duty to prescribe such forms as will require from any owner or operator herein mentioned such information as in the judgment of the board may be of use to it in determining the true and actual value of the properties of such owners or operators.

§11-6-3. Same—Toll bridges.

In the case of any bridge upon which a separate toll or fare is charged, such return shall show: (a) The location of the same; (b) for what used; and, if used by a railroad, what railroad uses it; (c) the length of such bridge; and, if used by a railroad, the number of tracks on it; (d) all other property owned by such owner or operator and used in connection with such bridge; (e) the capital actually invested; the amount of capital stock authorized and issued, the par value and the market value of the shares into which the capital stock is divided, and the amount of dividends declared on the capital stock within the twelve months preceding the first day of the current assessment year; the total amount of bonded indebtedness and of indebtedness not bonded; gross earnings for the year from all sources; (f) gross expenditures for the year, giving a detailed statement thereof under each class or head of expenditures; (g) any other information requested by the board of public works which the board deems may be of use to it in determining the actual value of such bridge or bridges.

§11-6-4. Same—Car line companies.

In the case of car lines used for the transportation or accommodation of passengers or freight by owners or operators, other than railroad companies making their return under this law, such return shall show for every such owner or operator: (a) All cars and other rolling
stock, giving a detailed statement of the number of cars, including passenger, mail, express, baggage, freight, sleeping, dining, parlor, refrigerator, stock or other cars of every description, and the true and actual value of all such cars used wholly or in part in this state, distinguishing between those used wholly in this state and those used partly within and partly without the state, and the true and actual value of those used wholly within the state and those used partly within and partly without the state, and the proportional value of such cars used partly within and partly without the state, according to the time used and the number of miles run by such cars in and out of the state, the railroad over which they were run, and the proportional value in each county within this state within which such cars were run; but in any case where it may appear to the board of public works that from the nature of the employment of such cars, or otherwise, it is not practicable to show the matters hereinbefore required in this section as to the cars used in this state, and the proportional value of the cars used partly within and partly without this state and each county thereof, the board may, as to such matters, accept such other information as it may be practicable to obtain, or in its discretion the board may dispense with such showing as to any such matter; (b) real and personal property of every kind, whatever, including money, credits and investments and the amount thereof, wholly held or used in this state, showing the amount and the true and actual value in each county; and (c) the actual capital employed in the business of such owner or operator, the total amount of bonded indebtedness with respect to such line, and of indebtedness not bonded; the whole length of the several lines of railroad over which such cars run, including branches and connecting lines in and out of the state; and, if such owner or operator be a corporation, its actual capital stock and the number, character, amount and market value of the shares thereof, and the amount of capital stock actually paid in; its bonded indebtedness and its indebtedness not bonded. The board of public works shall have the right to require any such owner or operator to furnish such other and further informa-
§11-6-5. Same—Pipeline companies.

1. In the case of a pipeline, such return shall show for each owner or operator:
   (a) The number of miles of pipeline owned, leased or operated within this state, the size or sizes of the pipe composing such line, and the material of which such pipe is made; (b) if such pipeline be partly within and partly without this state, the whole number of miles thereof within this state and the whole number of miles without this state, including all branches and connecting lines in and out of the state; (c) the length, size and true and actual value of such pipelines in each county of this state, including in such valuation the main line, branches and connecting lines, and stating the different values of the pipe separately; (d) its pumping stations, machine and repair shops and machinery therein, tanks, storage tanks and all other buildings, structures and appendages connected or used therewith, together with all real estate, other than its pipeline, owned or used by it in connection with its pipeline, including telegraph and telephone lines, and the true and actual value of all such buildings, structures, machinery and appendages and of each parcel of such real estate, including such telegraph and telephone lines, and the true and actual value thereof in each county in this state in which it is located; and the number and value of all tank cars, tanks, barges, boats and barrels; (e) its personal property of every kind whatsoever, including money, credits and investments, and the amount thereof wholly held or used in this state, showing the amount and value thereof in each county; (f) an itemized list of all other real property within this state, with the location thereof; and (g) the actual capital employed in the business of such owner or operator, the total amount of the bonded indebtedness of such owner or operator with respect to such line, and of indebtedness not bonded; and, if such owner or operator be a corporation, its capital stock, the character, number and amount and the market value of the shares thereof, and
the amount of capital stock actually paid in; its bonded
indebtedness and its indebtedness not bonded. The
board of public works shall have the right to require
such owner or operator to furnish such other and further
information as, in the judgment of the board may be of
use in determining the true and actual value of the
property to be assessed to such owner or operator.

§11-6-7. Same—Telegraph and telephone companies.

In the case of a telegraph or telephone line, such
report shall show for every such owner or operator: (a)
The number of miles of lines owned, leased or operated
within this state, the gauge of the wire, the number of
strands of wire, the material of which it is made, and,
as accurately as may be, the time when the line or any
material part thereof was constructed or last replaced;
(b) if such lines be partly within and partly without the
state, the whole number of miles thereof within this
state and the whole number of miles without this state,
including all branches and connecting lines in and out
of the state; (c) the true and actual value per mile of such
line in each county of this state; (d) its stations, shops
and machinery therein, and all buildings, structures and
appendages connected or used therewith, together with
all real estate, other than its telegraph or telephone line,
owned or used by it in connection with its line, and of
each parcel of such real estate and the true and actual
value thereof in each county in this state in which it is
located; (e) its personal property of every kind what-
soever, including money, credits and investments, and
the amounts thereof wholly held or used in this state,
showing the amount and value thereof in each county;
(f) an itemized list of all other real property within this
state, with the location thereof; and (g) the actual capital
employed in the business of such owner or operator, the
total amount of the bonded indebtedness of such owner
or operator, with respect to such line, and of all
indebtedness not bonded; and, if such owner or operator
be a corporation, its capital stock, the character,
number, amount and the market value of the shares
thereof, and the amount of capital stock actually paid
in; its bonded indebtedness and its indebtedness not
bonded. The board of public works shall have the right to require any such owner or operator to furnish such other and further information as, in the judgment of the board, may be of use to it in determining the true and actual value of the property to be assessed to such owner or operator.

§11-6-8. Form and manner of making return; failure to make return; criminal penalty.

All returns to be made to the board of public works, under this chapter, shall be made in conformity with any reasonable requirement of the board of which the person making the return shall have had notice, and shall be made upon forms which may be furnished by the board, and according to instructions which the board may give relating thereto, and to the description and itemizing of the property. Such owner or operator, whether a natural person, or a corporation or company, failing to make such return as herein required shall be guilty of a misdemeanor, and fined one thousand dollars for each month such failure continues.

§11-6-9. Compelling such return; procuring information and tentative assessments by tax commissioner.

(a) If any owner or operator fails to make such return within the time required by section one of this article, it shall be the duty of the tax commissioner to take such steps as may be necessary to compel such compliance, and to enforce any and all penalties imposed by law for such failure.

(b) The return delivered to the tax commissioner shall be examined by him, and if it be found insufficient in form or in any respect defective, imperfect or not in compliance with law, he shall compel the person required to make it to do so in proper and sufficient form, and in all respects as required by law.

(c) If any such owner or operator fails to make such return, the tax commissioner shall proceed, in such manner as to him may seem best, to obtain the facts and information required to be furnished by such returns.
The tax commissioner may send for persons and papers, and may compel the attendance of any person and the production of any paper necessary, in the opinion of said tax commissioner, to enable him to obtain the information required for the proper discharge of his duties under this section.

The tax commissioner shall arrange, collate and tabulate such returns and all pertinent information and data contained therein, such further evidence or information as may be required by the tax commissioner of such owner or operator, and all other pertinent evidence, information and data he has been able to procure, upon suitable work sheets, so that they may be conveniently considered, and shall on or before the fifteenth day of September, lay such returns and work sheets, together with his recommendations in the form of a tentative assessment of the property of each such owner or operator, before the board of public works. And as soon as the tax commissioner has completed the preparation of such work sheets and tentative assessments, he shall notify the owner or operator affected thereby of the amount of such tentative assessment by written notice deposited in the United States post office, addressed to such owner or operator at the principal office or place of business of such owner or operator, and the tax commissioner shall retain in his office true copies of such work sheets which shall be available for inspection by any such owner or operator or his duly authorized representative.

If any person shall refuse to appear before the board when required to do so, as aforesaid, or shall refuse to testify before the board in regard to any matter as to which the board may require him to testify, or if any person shall refuse to produce any paper in his possession or under his control, which the board may require him to produce, every such person shall be guilty of a misdemeanor, and fined five hundred dollars, and may be imprisoned not less than one nor more than six months, at the discretion of the court.
§11-6-11. Valuation of property by board.

Upon the fifteenth day after giving the notices required by section nine of this article, or as soon thereafter as reasonably convenient but not later than the first day of October, the board of public works shall proceed to assess and fix the true and actual value of all property of such owner or operator hereinbefore required to be returned, in each county through which the railroad, car line, cars, express, telegraph, telephone, or pipeline of such owner or operator runs, and in which any property to be assessed is located. In ascertaining such value the board shall consider the return, if any, made by the owner or operator, and any return which may have been previously made by such owner or operator, the work sheets and tentative assessment recommended by the tax commissioner, such evidence or information as may be offered by such owner or operator, such further evidence or information as may be required by the board of such owner or operator, and any other pertinent evidence, information and data. Any and all evidence, information and data, at a regular meeting of the board held for such purpose at least fifteen days after giving the notice required by section nine of this article. Before any assessment shall be made by the board, any and all evidence, information and data considered by the board shall be available for inspection by any such owner or operator or his duly authorized representative, and an opportunity given to be heard thereon when the board of public works has assessed any property hereby required to be returned, and has determined the valuation thereof, such assessment and valuation shall be entered of record in the book of minutes of its proceedings, and shall be certified by the secretary of the board to the auditor.

Nothing in this chapter contained shall be construed to require the assessment by the board of public works of any part of a railroad, telegraph, telephone or pipeline until such part is so far completed as to be fit for use. But material held by any railroad, telegraph, telephone or pipeline company shall be returned to the board of public works for assessment as personal
property. As soon as such assessment is made, the
secretary of the board shall notify the owner or operator
affected thereby of the amount thereof by written notice
deposited in the United States post office, addressed to
such owner or operator at the principal office or place
of business of such owner or operator. Such assessment
and valuation shall be final and conclusive, unless the
same be appealed from in the manner following, within
fifteen days after such notice is so deposited.

§11-6-12. Appeal from valuation by board.

Any owner or operator claiming to be aggrieved by
any such decision may, within the time aforesaid, apply
by petition in writing, duly verified, to the circuit court
of the county in which the property so assessed is
situated, or if such property be situated in more than
one county then in the county in which the largest
assessment of such owner or operator was made in the
next preceding year, for an appeal from the assessment
and valuation so made of all such property, and
jurisdiction is hereby conferred upon and declared to
exist in the court, in which such application is filed, to
grant, docket and hear such appeal; and such appeal, as
to all of the property so assessed, as well as that situated
in the county of the court so applied to, as that situated
in the several other counties, shall forthwith be allowed
by such court so applied to, and be heard by such court
as to all of such property as soon as possible after the
appeal is docketed, but notice in writing of such petition
shall be given to the secretary of state, as secretary of
the board of public works, by mailing a copy of the
petition for an appeal filed as aforesaid, which said
petition shall recite the fact that copies of such petition
have been sent by registered mail. Notice in writing of
the hearing upon such petition shall be given to the state
tax commissioner at least fifteen days beforehand.
Likewise, the state tax commissioner may, by giving
notice in writing at least fifteen days beforehand to the
petitioner, bring on such appeal for hearing. Upon such
hearing the court shall hear all such legal evidence as
shall be offered on behalf of the state or any other
county, district or municipal corporation interested, or
on behalf of the appealing owner or operator. If the
court be satisfied that the value so fixed by the board
of public works is correct, it shall confirm the same, but
if it be satisfied that the value so fixed by the board is
either too high or too low, the court shall correct the
valuation so made and shall ascertain and fix the true
and actual value of such property according to the facts
proved, and shall certify such value to the auditor and
to the secretary of the board of public works. The state
or the owner or operator may appeal to the supreme
court of appeals if the assessed value of the property be
fifty thousand dollars or more.

If the court to which an application for appeal would
properly be made as aforesaid shall not be in session,
the judge thereof in vacation shall forthwith allow the
appeal, and if the judge thereof be disqualified or for
any reason not be available, the filing of the aforesaid
petition in the office of the clerk of the circuit court of
the county in which the largest assessment of such
owner or operator was made in the preceding year,
within the time of aforesaid, shall constitute sufficient
compliance with this section, and the appeal shall
thereafter be proceeded with as otherwise provided in
this section.

§11-6-13. Apportionment of value among counties, dis-
tricts and municipalities.

1 In case the list and valuation of the property filed with
the tax commissioner be satisfactory to the board of
public works, or upon assessment of the property of such
owner or operator being made by the board of public
works, the auditor shall immediately apportion to each
county, in which any part of such property is situated,
the value of the property therein of every such owner
or operator as valued or assessed hereunder and the
relative value of such operating property within each
county compared to the value of the total operating
property within the state, to be determined upon such
factors as the auditor shall deem proper; and further
shall apportion such values among the several districts,
being school districts, and a proportional valuation to
each municipality therein, in which any part of such
property is situated, according to the value thereof, as near as may be, and forthwith shall certify to the county commission of such county the values so apportioned. The clerk of the county commission shall forthwith certify such values to the school district and to the several municipalities, respectively, in such county.

Inasmuch as there was litigation challenging the long term apportionment method consistently used by the state auditor under the provisions of this section by which distribution was made of the ad valorem tax values of the operable properties and assets of public service businesses attributable to more than one county, and with the Legislature subsequently approving, codifying and ordering the continuance of such method of apportionment; and inasmuch as the Legislature having changed such apportionment method and having vested the authority to accomplish such and to issue assessments under this article through actions of the state tax commissioner rather than assessment by the board of public works and apportionment by the state auditor, pursuant to chapter one hundred fifty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-five; and in light of the Legislature being unaware of the dramatic shifting of valuations among counties as a result of application or use of such new apportionment method and thus desiring to return to the former method of apportionment and that the same be performed by the state auditor, as formerly and that final assessment activity, as such, and hearings in respect thereof be performed by the board of public works, as formerly; therefore, the Legislature finds and determines that apportionment and distribution of ad valorem tax valuations hereunder should and are to be performed by the state auditor promptly and for current periods and on the basis of the above-mentioned long-term apportionment method used consistently by the state auditor and with the valuations as determined by the application of such apportionment method to be certified forthwith to the county commissions. Specifically, as to the true and actual values of the property of public service businesses reported on their tax returns required to be filed by the first day of May, one
thousand nine hundred eighty-five and as thereafter
determined by tentative assessment and final assess-
ment by the tax commissioner or by court decision for
fiscal year one thousand nine hundred eighty-six, the
state auditor shall, by the first day of March, one
thousand nine hundred eighty-six, or as soon as may be
practicable, apportion and distribute such values, as
required, to the respective levying bodies and on the
basis of his using the long-term, consistent apportion-
ment method of his office as long engaged in and applied
under the provisions of this section and article.

§11-6-16. Entry of assessment by auditor of property of
such public service businesses.

As soon as possible after the valuation of the property
of such owner or operator is fixed by the board of public
works or by the circuit court on appeal as aforesaid, and
after he shall have obtained the information herein
provided for to enable him to do so, the auditor shall
assess and charge each class of property of every such
owner or operator with the taxes properly chargeable
thereon, in a book to be kept by him for that purpose,
as follows: (a) With the whole amount of taxes upon such
property for state and state school purposes, if any such
taxes are levied; (b) with the whole amount of taxes on
such property in each county for county purposes; (c)
with the whole amount of taxes on such property in each
school district for free school and building purposes; and
(d) with the whole amount of taxes on such property in
each municipal corporation for each and all of the
purposes for which a levy therein was made by the
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.]
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
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.

(a) Upon any person engaging or continuing within this state in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is likewise hereby levied and shall be collected taxes on account of the business engaged in equal to gross income of the business multiplied by the respective rates as follows:

(1) Street and interurban and electric railways, one and four-tenths percent;

(2) Water companies, four and four-tenths percent, except as to income received by municipally owned water plants;

(3) Electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and four percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing same: Provided, That electric light and power companies which engage in the supplying of public service but which do not generate or produce electric power shall be taxed on the gross income derived therefrom at the rate of three percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants: Provided, however, That the sale of electric power under this section shall be taxed at the rate of two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage of such plant location exceeds two hundred thousand kilowatts per hour in a year: Provided further, That such two and forty-six hundredths percent rate will be reduced to a rate of two and three hundred thirty-seven thousandths percent through occurrence of
the contemplated five percent reduction of rates on the 
first day of July, one thousand nine hundred eighty-five, 
and with such rate to thereafter, on the first day of July, 
one thousand nine hundred eighty-seven, become two 
percent: Provided further, That the sale of electric power 
under this section shall be exempt from the tax imposed 
by section two if it is separately metered and consumed 
in an electrolytic process for the manufacture of chlorine 
in this state, and the rate reduction herein provided to 
the taxpayer shall be passed on to the manufacturer of 
the chlorine;

(4) Natural gas companies, four and twenty-nine 
hundredths percent on the gross income;

(5) Toll bridge companies, four and twenty-nine 
hundredths percent; and

(6) Upon all other public service or utility business, 
two and eighty-six hundredths percent.

(b) The measure of this tax shall not include gross 
income derived from commerce between this state and 
other states of the United States or between this state 
and foreign countries. The measure of the tax under this 
section shall include only gross income received from the 
supplying of public service. The gross income of the 
taxpayer from any other activity shall be included in the 
measure of the tax imposed upon such other activity by 
the appropriate section or sections of this article.

§11-13-3g. Tax credit for increased generation of electricity from coal.

(a) There shall be allowed as a credit against the tax 
imposed by section two of this article, on the privilege 
taxable under section two-m of this article, the amount 
determined under article thirteen-h of this chapter, 
providing a credit for increased generation of electricity 
at electric power plants in this state which burn coal 
produced by miners who are residents of this state.

(b) The tax commissioner may prescribe such regula-
tions as he deems necessary to carry out the purposes 
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.

The Legislature finds that electricity generated in this state is by and large generated from coal; that this state and this region are blessed with large quantities of mineable coal that is suitable for use as fuel to generate electricity; that there are sound economic purposes to locating electric power generating facilities in the coal fields and to encouraging power companies to operate such plants at their most cost-effective level; and that many West Virginia miners work in mines located in other states and live or reside in this state. Therefore, encouraging greater utilization of existing power plants and their use of coal produced by West Virginia miners at mines located in this or other states, is in the public interest and promotes the general welfare of the people of this state, in that it will increase employment opportunities for West Virginia residents.


(1) Base year.—The term "base year" means the average number of kilowatts of electric power generated in this state from coal by the taxpayer during either (a) the three years immediately preceding the current tax year; or (b) the three tax years immediately preceding the tax year one thousand nine hundred eighty-six, whichever three-year period the taxpayer shall by the first day of July, one thousand nine hundred eighty-six, permanently elect to use as the base year.

(2) Eligible coal.—The term "eligible coal" means coal produced from an eligible mine, as defined in subsection (3).

(3) Eligible mine.—The term "eligible mine" means any mine located in this state and any mine which employs at least one hundred West Virginia residents (as defined for personal income taxes in section seven.
article twenty-one of this chapter) located in another
2 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
electricity at a power plant located in this state,
that uses coal as its primary source of fuel to
generate such electricity, shall be allowed a credit,
as determined under subsection (b) of this section,
against its liability for tax under section two-m,
article thirteen of this chapter, if the taxpayer
increases the amount of electricity it generates in
this state, consuming coal produced from an
eligible mine that employs miners who are resi-
dents of this state.

12 (b) Amount of credit. The credit allowed by this
section is an amount equal to the amount deter-
mined by:

15 (1) First multiplying the taxpayer's liability for tax
under section two-m, article thirteen of this chapter, for
the tax year, by a fraction equal to one minus a fraction
in which:

19 (A) The numerator is the kilowatts of electric power
generated from coal in this state by the taxpayer during
the base year; and

22 (B) The denominator is the kilowatts of electric power
generated from coal in this state by the taxpayer during
the tax year.

25 (2) Second multiplying the product determined under
paragraph (1) by a fraction in which:

27 (A) The numerator is tons of eligible coal purchased
by the taxpayer during the tax year to generate
electricity in this state; and
(B) The denominator is the total tons of coal pur- 
chas ed by the taxpayer during the tax year to generate 
electricity in this state.

c (c) Effective date. The credit allowed by this section 
shall apply to business and occupation tax liabilities for 
calendar months beginning after the thirtieth day of 
June, one thousand nine hundred eighty-six. It shall not 
apply to liabilities for calendar months or quarters 
ending before such thirtieth day of June.


(a) The person selling coal produced from an eligible 
mine shall certify to the electric power company 
purchasing the coal the amount thereof that was 
produced from an eligible mine.

(b) If a producer of eligible coal sells that coal to 
purchaser for resale to an electric power company for 
consumption in this state, he shall certify to his 
purchaser the amount thereof that was produced from 
an eligible mine.

(c) All certifications shall be in the form prescribed 
by the tax commissioner and provide such information 
as he deems necessary for determining compliance with 
this article. An employee who signs the certification on 
behalf of a proprietorship, corporation, partnership or 
a group or combination acting as a unit shall be 
presumed to have authority to make and sign the 
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.

CHAPTER 11. TAXATION.

Article.
13B. Telecommunications Tax.
13G. Tax Credit for Reducing Telephone Utility Rates for Certain Low-Income Residential Customers.

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 imposed by this article for the taxable year, the amount determined under articles thirteen-c, thirteen-d and thirteen-g of this chapter, relating respectively to:

(1) Tax credit for business investment and jobs expansion;

(2) Tax credit for eligible research and development projects;

(3) Tax credit for coal-loading facilities; and

(4) Tax credit for reducing telephone utility rates for certain low-income residential customers.

(b) The tax commissioner shall prescribe such rules as he considers necessary to carry out the purposes of this section and articles thirteen-c, thirteen-d and thirteen-g of this chapter.

ARTICLE 13G. TAX CREDIT FOR REDUCING TELEPHONE UTILITY RATES FOR CERTAIN LOW-INCOME RESIDENTIAL CUSTOMERS.

§11-13G-1. Legislative purpose.

In order to reimburse telephone utilities for the revenue deficiencies which they incur in providing telephone service at special reduced rates to certain low-income residential customers in accordance with the provisions of article two-c, chapter twenty-four of this code, there is hereby provided a tax credit for providing telephone service at special rates to qualified low-income residential customers.


(a) Any term used in this article shall have the same meaning as when used in a comparable context in articles
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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 article may be taken as a credit against corporation net income taxes due for the taxable year as provided in section eleven-a, article twenty-four of this chapter.

2 (b) If any portion of the amount certified as the eligible taxpayer's revenue deficiency by the public service commission is not recovered under subsection (a) hereof, the unrecovered amount may be carried over to the subsequent year as a tax credit as allowed by section three of this article and shall be applied as a credit before any other credits for that year are applied.

3 (c) In no event shall an eligible taxpayer be allowed to recover more than one hundred percent of its certified 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 primary tax liability of an eligible taxpayer under this article for the cost of providing telephone service at special reduced rates to qualified low-income residential customers which has not been reimbursed by any other means.

2 (b) Definitions. — For purposes of this section, the term:

3 (1) "Eligible taxpayer" means a utility which has provided telephone service to qualified low-income residential customers at special reduced rates.

4 (2) "Cost of providing telephone service at special reduced rates" means the amount certified by the public service commission under the provisions of section two, article two-c, chapter twenty-four of this code, as the revenue deficiency incurred by a telephone utility in providing telephone service at special reduced rates, as required by section one, article two-c, chapter twenty-four of this code.

5 (3) "Special reduced rates" means the rates ordered by the public service commission under the authority of section one, article two-c, chapter twenty-four of this code.

6 (4) "Qualified low-income residential customers"
means customers eligible to receive telephone service at special reduced rates.

(c) Amount of credit. — The amount of the credit available to any eligible taxpayer shall be equal to its cost of providing telephone service at special reduced rates to qualified low-income residential customers less any reimbursement of such cost which the taxpayer has received through any other means.

(d) When credit may be taken. — An eligible taxpayer may claim a credit allowed under this section on its annual return for the taxable year for which it receives certification of the amount of its revenue deficiency from the public service commission.

Notwithstanding the provisions of section sixteen of this article to the contrary, no credit may be claimed on any declaration of estimated tax filed for such taxable year prior to the first day of July of such taxable year. Such credit may be claimed on a declaration or amended declaration filed on or after such date, but only if the amount certified will not be recovered by application of the tax credit allowed by article thirteen-g of this chapter. In such event, only that amount not recovered by the tax credit allowed by article thirteen-g of this chapter may be considered or taken as a credit when estimating the tax due under this article. In no event may the eligible taxpayer recover more than one hundred percent of its revenue deficiency as certified by the public service commission.

(e) Application of credit. — The credit allowable by this section for a taxable year is not subject to the fifty percent limitation specified in section nine of this article. Notwithstanding the provisions of section four, article thirteen-g of this chapter, any unused credit may be carried over and applied against the eligible taxpayer’s tax liability in the manner specified in section five, article thirteen-g of this chapter.

(f) Copy of certification order. — A copy of the certification order from the public service commission shall be attached to any annual return on which a credit allowed by this section is taken.

CHAPTER 24. PUBLIC SERVICE COMMISSION.
ARTICLE 2C. REDUCED RATES FOR CERTAIN LOW-INCOME RESIDENTIAL CUSTOMERS OF TELEPHONE SERVICE.

§24-2C-1. Legislative findings; utilities subject to public service commission to file new rates.

The Legislature finds that universal telephone service contributes to the state's economic, social and political integration and development. The preservation of universal telephone service is therefore of utmost importance to the state and its citizens. Recent changes in the telecommunications industry, however, both in its structure and in the national policy which governs it, have begun to exert a general, upward pressure on the rates for basic telephone service. Although neither the extent to which basic telephone rates may rise in the future, nor the effect of any such future increases on the general affordability of telephone service can be ascertained at this time, the Legislature finds that anticipatory action should nonetheless be taken to preserve the universal telephone service which has been substantially achieved in this state.

All telephone utilities, except cooperative telephone utilities, providing local exchange dial access line service subject to the jurisdiction of the public service commission are therefore directed to file with the commission tariffs providing for the offering of a new class of basic residential service, at a special reduced rate, to certain low-income households. Such tariffs shall be filed after the adoption of the rules and regulations mandated by subsections (b) and (c), section four of this article.

§24-2C-2. Tel-assistance; definitions.

The new service herein provided for is known as "tel-assistance service" and consists of an individual,
residential local exchange dial access line and an allowance
for usage not to exceed two dollars in value. As used in this
article, the term "usage" means the local exchange service
and the long distance service provided by the telephone
utility furnishing the tel-assistance service. In any instance
in which an individual measured or message line cannot be
provided to the customer, party-line service shall be
provided at the tel-assistance rate until such time as an
individual measured or message line can be provided.

§24-2C-3. Monthly rate set by public service commission;
prohibited and permissible charges.

The monthly rate for tel-assistance service shall be set
initially by the commission at the lower of (a) the lowest
priced service available to the customer at the time of his or
her application, or (b) seven dollars and fifty cents. All
usage exceeding two dollars in value shall be charged for at
the otherwise applicable tariff rate. No other local voice
telephone service may be provided to the dwelling place of a
tel-assistance customer, nor may individual line foreign
zone or foreign exchange service be provided to a tel-
assistance customer. A telephone utility may not impose an
order processing charge or line charge when an existing
customer who is eligible for tel-assistance service changes
to such service, nor may any charge be made when a tel-
assistance service customer loses his or her eligibility and
changes to another class of residential service. However,
charges for the initial installation of service for a new
customer, or charges for moving a customer's service from
one dwelling place to another shall be made at the otherwise
applicable tariff rate. The commission may, upon having set
the rate initially for tel-assistance service as herein
provided, change such rate from time to time upon a finding
that is reasonable to do so, and may, in connection
therewith increase or decrease the amount of local service
usage provided as a part thereof.

§24-2C-4. Availability of tel-assistance service; determination
of eligibility; promulgation of rules.

(a) Tel-assistance service shall be made available only
to qualified low-income customers who are:
(1) Either disabled or age sixty or older; and
(2) Social security supplemental security income benefit recipients, aid to dependent children (AFDC) benefit recipients, aid to dependent children-unemployed (AFDC-U) benefit recipients, food stamp recipients or whose total household income is at or below the income level established for social security supplemental security income eligibility.

(b) The public service commission shall establish, by rules and regulations, procedures governing the application for and the provision of tel-assistance service and the determination and certification of the revenue deficiency resulting from the provision of tel-assistance service, including, but not limited to, rules and regulations determining both the methods by which telephone utilities shall maintain records pertaining to such deficiency and the methods by which such deficiency shall be calculated. Such rules and regulations shall be promulgated pursuant to section seven, article one of this chapter and adopted within one hundred twenty days of the effective date of this article.

(c) The department of human services shall establish, by rules and regulations, procedures to inform persons of their eligibility for tel-assistance service, to assist applicants for tel-assistance service in proving their eligibility therefor, and to determine on a continuing basis the eligibility of persons receiving tel-assistance service and communicate such determinations to the telephone utilities. Initially, such rules and regulations shall be adopted and filed in the state register within one hundred twenty days of the effective date of this article and shall not otherwise be subject to the requirements of chapter twenty-nine-a of this code. Such rules and regulations initially adopted shall become effective immediately upon filing in the state register and remain in effect until supplanted by legislative rules promulgated pursuant to chapter twenty-nine-a of this code. Final approved legislative rules shall be submitted by the department of human services to the legislative rule-making review committee on or before the first day of August, one thousand nine hundred eighty-seven.

§24-2C-5. Recovery of revenue deficiencies.

In order to provide the special reduced rate mandated by
section one of this article and still maintain the integrity of
the earnings of the utilities offering tel-assistance service,
the commission shall determine, upon application by any
affected utility, that utility's revenue deficiency for the
utility's taxable year resulting from the special reduced
rates. Upon determining any utility's revenue deficiency,
the commission shall issue an order certifying the amount of
that deficiency. Certified revenue deficiencies shall
thereafter be recovered by the affected utilities as follows:
(a) A utility's certified revenue deficiency, if any,
resulting from the provision of tel-assistance service shall
be allowed as a tax credit against the liability of the utility
pursuant to the provisions of article thirteen-g, chapter
eleven of this code.
(b) After allowance of such a tax credit pursuant to the
provisions of article thirteen-g, chapter eleven of this code,
a utility's remaining certified revenue deficiency, if any,
resulting from the provision of tel-assistance service shall
be allowed as a tax credit against the liability of the utility
pursuant to the provisions of section eleven-a, article
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.]
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-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.


1. (a) General.—When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

2. (b) Terms defined.

3. (1) Business.—The term “business” means any activity taxable under article twelve-a or thirteen (or both) of this chapter, which is engaged in by any person in this state: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by article thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

4. (2) Business expansion.—The term “business expansion” means capital investment in a new or expanded business facility in this state.

5. (3) Business facility.—The term “business facility” means any factory, mining operation, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and personal property located at or within such facility, used in connection with the operation of such facility, in a business that is taxable in this state.

6. (A) “Mining operation” means the place at which a person extracts ores or minerals from the ground. It includes both surface and underground mining operations.

7. (B) “Surface mine” means the surface of land upon which activities are conducted which disturb the natural surface of the land and result in the production of ores.
or minerals.

(C) "Underground mine" means the surface effects associated with the shafts, slopes, lifts or inclines connected with excavations penetrating seams or strata of minerals, and the equipment connected therewith which contribute to the mining, preparation or handling of ores or minerals.

(4) Commissioner or tax commissioner.—The terms “commissioner” and “tax commissioner” are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his delegate.

(5) Compensation.—The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Controlled group.—The term “controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the other corporations.

(7) Corporation.—The term “corporation” means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(8) Delegate.—The term “delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(9) Eligible taxpayer.—The term “eligible taxpayer” means any person subject to the taxes imposed by article twelve-a or thirteen (or both) of this chapter who makes
qualified investment in a new or expanded business facility located in this state that results in the creation of at least fifty new jobs: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).” “Eligible taxpayer” shall also include an affiliated group of taxpayers if such group elects to file a consolidated corporation net income tax return under article twenty-four of this chapter.

(10) Expanded facility.—The term “expanded facility” means any business facility (other than a new or replacement business facility) resulting from the acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property if such improvements or additions are purchased on or after the first day of March, one thousand nine hundred eighty-five, but only to the extent of the taxpayer’s qualified investment in such improvements or additions.

(11) Includes and including.—The terms “includes” and “including,” when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(12) New business facility.—The term “new business facility” means a business facility which satisfies all the requirements of subparagraphs (A), (B), (C), and (D) of this paragraph:

(A) The facility is employed by the taxpayer in the conduct of a business the net income of which is taxable under article twenty-one or twenty-four of this chapter. Such facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer’s only activity with respect to such facility is to lease it to another person or persons.

(B) Such facility is acquired by, or leased to, the taxpayer on or after the first day of March, one thousand nine hundred eighty-five.
(C) The facility was not acquired by the taxpayer from a related person.

(D) If such facility was acquired by the taxpayer from an unrelated person (or persons), such facility was not in service or use during the ninety days immediately prior to transfer of the title to such facility, or to the commencement of the term of the lease of such facility, unless upon application of the taxpayer, setting forth good and sufficient cause, the tax commissioner consents to waiving this ninety-day period.

(13) New employee.—The term “new employee” means a person residing and domiciled in this state, hired by the taxpayer to fill a position for a job in this state, which previously did not exist in the business enterprise in this state, prior to the date on which the taxpayer’s qualified investment is placed in service or use in this state. In no case shall the new employees allowed for purposes of this credit exceed the total increase in the taxpayer’s employment in this state. A person shall be deemed to be a “new employee” if such person’s duties in connection with the operation of the business enterprise are on:

(A) A regular, full-time and permanent basis.

(1) “Full-time employment” means employment for at least one hundred twenty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

(2) “Permanent employment” does not include employment that is temporary or seasonal.

(B) A part-time basis, provided such person is customarily performing such duties at least twenty hours per week for at least six months during the taxable year.

(14) New job.—The term “new job” means a job which did not exist in the business of the taxpayer in this state prior to the taxpayer’s qualified investment being made, and which is filled by a new employee.
(15) New property.—The term “new property” means:

(A) Property the construction, reconstruction or erection of which is begun on or after March one, one thousand nine hundred eighty-five; and

(B) Property leased or acquired by the taxpayer on or after the first day of March, one thousand nine hundred eighty-five, if the original use of such property commences with the taxpayer and commences after such date.

(16) Original use.—The term “original use” means the first use to which the property is put, whether or not such use corresponds to the use of the property by the taxpayer.

(17) Partnership and partner.—The term “partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term “partner” includes a member in such a syndicate, group, pool, joint venture or organization.

(18) Person.—The term “person” includes any natural person, corporation or partnership.

(19) Property purchased for business expansion.

(A) Included property.—Except as provided in subparagraph (B), the term “property purchased or leased for business expansion” means real property and improvements thereto, and tangible personal property, but only if such real or personal property was constructed, purchased, or leased, by the taxpayer, for use as a component part of a new or expanded business facility, as defined in this section, which is located within West Virginia. This term includes only:

(1) Real property and improvements thereto having a useful life of four or more years, that was purchased or constructed on or after the first day of March, one thousand nine hundred eighty-five, by the taxpayer.

(2) Real property and improvements thereto, or tangible personal property acquired by written lease
having a primary term of ten or more years that
commenced and was executed by the parties thereto on
or after the first day of March, one thousand nine
hundred eighty-five.

(3) Tangible personal property purchased by the
taxpayer on or after the first day of March, one
thousand nine hundred eighty-five, with respect to
which depreciation, or amortization in lieu of
depreciation, is allowable in determining the personal or
corporation net income tax liability of the business
taxpayer under article twenty-one or twenty-four of this
chapter, and which has a useful life at the time such
property is placed in service or use in this state, of four
or more years.

(4) Tangible personal property acquired by written
lease having a primary term of four years or longer, that
commenced and was executed by the parties thereto on
or after the first day of February, one thousand nine
hundred eighty-six, if used as a component part of a new
or expanded business facility, shall be included within
this definition.

(5) Tangible personal property owned or leased, and
used by the taxpayer at a business location outside this
state which is moved into this state on or after the first
day of February, one thousand nine hundred eighty-six,
for use as a component part of a new or expanded
business facility located in this state: Provided, That if
the property is owned, it must be depreciable or
amortizable personal property for income tax purposes,
and have a useful life of four or more years remaining
at the time it is placed in service or use in this state,
and if the property is leased, the primary term of the
lease remaining at the time the leased property is placed
in service or use in this state, must be four or more
years: Provided, That where property was purchased for
business expansion by the taxpayer prior to the first day
of March, one thousand nine hundred eighty-five, but
placed in service or use in this state after such date by
the taxpayer, such property shall nevertheless be
treated as included property under this subparagraph
(A) if such property otherwise qualifies as such under
this subparagraph (A), if the tax commissioner, upon
application by the taxpayer, certifies that at least fifty
new jobs were created by the taxpayer prior to the first
day of January, one thousand nine hundred eighty-eight,
as a direct result of this capital investment of the
taxpayer, and such jobs did not previously exist in this
state, determined as of the thirty-first day of January,
one thousand nine hundred eighty-six: Provided, how­
ever, That the inclusion of such property shall not give
rise to a refund of any taxes administered under this
chapter, the liability for which arose prior to the first
day of February, one thousand nine hundred eighty-six.

(B) Excluded property.—The term “property pur­
chased or leased for business expansion” shall not
include:

(1) Property owned or leased by the taxpayer and for
which credit was taken under article thirteen-c of this
chapter prior to its repeal, on the thirteenth day of
April, one thousand nine hundred eighty-five, or under
article thirteen-d or thirteen-e of this chapter;

(2) Repair costs, including materials used in the
repair, unless for federal income tax purposes, the cost
of the repair must be capitalized and not expensed;

(3) Motor vehicles licensed by the department of motor
vehicles: Provided, That such property, if purchased or
leased on or after the first day of February, one
thousand nine hundred eighty-six, shall not be excluded
by virtue of this clause (3);

(4) Airplanes;

(5) Off-premise transportation equipment: Provided,
That such property, if purchased or leased on or after
the first day of February, one thousand nine hundred
eighty-six, shall not be excluded by virtue of this clause
(5);

(6) Property which is primarily used outside this state;
and

(7) Property which is acquired incident to the
purchase of the stock or assets of the seller, unless for
good cause shown, the tax commissioner consents to waiving this requirement.

(c) *Purchase date.*—Property shall be deemed to have been purchased prior to a specified date only if:

1. The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the purchase prior to the specified date;

2. The machinery or equipment was owned by the taxpayer prior to the specified date or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the specified date; or

3. In the case of leased property, there was a binding written lease or contract to lease identifiable property in effect prior to the specified date.

(20) *Purchase.*—The term "purchase" means any acquisition of property, but only if:

A. The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707 (b) of the United States Internal Revenue Code of 1954, as amended, and in effect on the first day of January, one thousand nine hundred eighty-five;

B. The property is not acquired by one component member of a controlled group from another component member of the same controlled group; and

C. The basis of the property for federal income tax purposes, in the hands of the person acquiring it is not determined:

1. In whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

2. Under Section 1014 (e) of the United States Internal Revenue Code of 1954, as amended, and in effect on the first day of January, one thousand nine
hundred eighty-five.

(21) Qualified activity.—The term “qualified activity” means any business or other activity subject to the tax imposed by article twelve-a or thirteen (or both) of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(22) Related person.—The term “related person” means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association or trust that is in control of the taxpayer;

(C) A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of subdivisions (20) and (22) of this section, “control,” with respect to a corporation means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. “Control,” with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267 (c) of the United States Internal Revenue Code of 1954, as amended, other than paragraph (3) of such section.

(23) Replacement facility.—The term “replacement
facility" means any property (other than an expanded
facility) that replaces or supersedes any other property
located within this state that:

(A) The taxpayer or a related person used in or in
connection with any activity for more than two years
during the period of five consecutive years ending on the
date the replacement of superseding property is placed
in service by the taxpayer.

(B) Is not used by the taxpayer or a related person
in or in connection with any qualified activity for a
continuous period of one year or more commencing with
the date the replacement or superseding property is
placed in service by the taxpayer.

(24) Taxpayer.—The term “taxpayer” means any
person subject to the tax imposed by article twelve-a or
thirteen (or both) of this chapter: Provided, That on and
after the first day of July, one thousand nine hundred
eighty-seven, the phrase “taxes imposed by article
twelve-a or thirteen (or both) of this chapter” shall mean
“taxes imposed by articles thirteen, thirteen-a, thirteen-b
and twenty-three of this chapter (or any one or combina-
tion of such articles of this chapter).”

(25) This code.—The term “this code” means the code
of West Virginia, one thousand nine hundred thirty-one,
as amended.

(26) This state.—The term “this state” means the state
of West Virginia.

(27) Used property.—The term “used property” means
property acquired after the twenty-eighth day of
February, one thousand nine hundred eighty-five, that
is not “new property.”

§11-13C-4. Amount of credit allowed.

(a) Credit allowed.—Eligible taxpayers shall be
allowed a credit against the portion of taxes imposed by
this state that are attributable to and the consequence
of the taxpayer’s qualified investment in a new or
expanded business in this state, which results in the
creation of new jobs. The amount of this credit shall be
(b) Amount of credit.—The amount of credit allowable is determined by multiplying the amount of the taxpayer's "qualified investment" (determined under section four-a or six, or both) in "property purchased for business expansion" (as defined in section three) by the taxpayer's new jobs percentage (determined under section seven). The product of this calculation establishes the maximum amount of credit allowable under this article, due to the qualified investment.

(c) Application of credit over ten years.—The amount of credit allowable must be taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the taxpayer places the qualified investment in service or use in this state, unless the taxpayer elected to delay the beginning of the ten-year period until the next succeeding taxable year. This election shall be in the annual return filed for the taxable year in which the qualified investment is placed into service or use by the taxpayer. Once made, the election cannot be revoked. The annual credit allowance shall be taken in the manner prescribed in section four of this article.

(d) Placed in service or use.—For purposes of the credit allowed by this section, property shall be considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

§11-13C-4a. Credit allowed for locating corporate headquarters in this state.

(a) Credit allowed.—A corporation that presently has its corporate headquarters located outside this state that relocates its corporate headquarters in this state and
employs, on a full-time basis, at its new corporate headquarters location, at least fifteen people, who are domiciled in this state, shall be allowed credit under this article, the amount of which shall be determined as provided in subsection (b).

(b) Determination of credit.—The amount of credit allowed by subsection (a) shall be determined at the election of the taxpayer:

(1) By multiplying its adjusted qualified investment by its new jobs percentage (as determined under section seven of this article); or

(2) By multiplying its adjusted qualified investment by ten percent.

(c) Application of credit.—The credit allowed by this section shall be applied in the manner prescribed in section five of this article: Provided, That the amount of corporation net income taxes against which the credit allowed by this section may be applied shall be the sum of the corporation net income tax due on adjusted federal taxable income allocated to this state under section seven, article twenty-four of this chapter, plus that portion of the corporation net income tax due on adjusted federal taxable income apportioned to this state under section seven, article twenty-four of this chapter, that is further apportioned to the qualified investment using the payroll factor provided in paragraph (1), subsection (h) of said section five. For all other purposes, the credit allowed by this section shall be treated as credit allowed by section four of this article.

(d) Definitions.—For purposes of this section:

(1) Adjusted qualified investment.—The term “adjusted qualified investment” means the taxpayer’s qualified investment as determined under section six of this article, plus the cost of the reasonable and necessary expenses it incurred to relocate its corporate headquarters at a location in this state from its present location outside this state.

(2) Corporate headquarters.—The term “corporate headquarters” means the place at which the corporation
has its commercial domicile and from which the business of the corporation is primarily conducted.

(3) Reasonable, and necessary expenses incurred to relocate corporate headquarters.—The phrase “reasonable and necessary expenses incurred to relocate corporate headquarters” means only those expenses incurred and paid by the corporation, to unrelated third parties, to move its corporate headquarters and its corporate headquarters employees to this state that are, upon application by the corporation, determined by the tax commissioner to have been both reasonable and necessary to effectuate the move.

(e) Effective date.—The credit allowed by this section shall be allowable for corporate headquarters placed in service or use on or after the first day of February, one thousand nine hundred eighty-six.

§11-13C-4b. Credit allowable for certified projects.

(a) In general.—A project certified by the tax commissioner shall be eligible for the credit allowable by this article. A project eligible for certification under this section is one where:

(1) The qualified investment under this article creates at least fifty new jobs but such qualified investment is placed in service or use over a period of three successive tax years: Provided, That such qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer’s application for project certification and approved by the tax commissioner, and the qualified investment placed in service or use during the first tax year would not have been made without the expectation of making the qualified investment placed in service or use during the next two succeeding tax years;

(2) The qualified investment is made by one or more persons, but some or all of the new jobs created at each new or expanded business facility as a result of the
qualified investment are created by one or more other persons: **Provided,** That at least fifty new jobs are created at the new or expanded business facility or facilities in which the qualified investment is made, and such jobs are, upon application, certified by the tax commissioner as new jobs created as a direct result of the qualified investment, and that such qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer's application for project certification and approved by the tax commissioner.

(3) The qualified investment is made by one or more persons but some or all of the new jobs created as a direct result of the qualified investment are created by one or more other persons: **Provided,** That at least fifty new jobs are created within a seventy-five mile radius of each new or expanded business facility in which the qualified investment is made, and such jobs are, upon application, certified by the tax commissioner as being new jobs created as a direct result of the qualified investment, and that such qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer's application for project certification and approved by the tax commissioner.

(b) **Application for certification.**—The application for certification of a project under this section shall be filed with the tax commissioner prior to the date on which the capital investment for which project certification is sought is first placed in service or use in this state. This application shall be approved in writing by all the participants in the project and shall contain such information as the tax commissioner may require to determine whether the project should be certified as eligible for credit under this article.

(c) **Taking of credit.**
(1) If the certified project for which qualified investment is made involves one or more persons making the capital investment and one or more persons, or a combination thereof, creating at least fifty new jobs at the site of the new or expanded business facility or facilities, then credit shall be allowed under this article for the certified project based upon the qualified investment in the certified project (as determined under section six) multiplied by the project's new-jobs percentage (determined under section seven).

(2) If the certified project for which qualified investment is made involves one or more persons making the capital investment and one or more persons, or a combination thereof, creating at least fifty new jobs located within a seventy-five mile radius of each new or expanded business facility in which the qualified investment is made, then credit shall be allowed under this article for the certified project based upon the qualified investment in the certified project (as determined under section six) multiplied by fifty percent.

(3) The amount of allowable credit as determined under subdivisions (1) and (2) above, shall be applied as provided in section five and may be claimed by one participant in the project, or divided among the several participants in the project, in the manner provided in the project's application to the tax commissioner for certification under this section. Such allocation, if approved by the tax commissioner, shall constitute a binding election by the participants in the project for the entire term during which the credit attributable to the qualified investment in the certified project may be applied to reduce tax liabilities. The participant or participants claiming the credit for qualified investments in a certified project shall annually file with their income tax returns filed under this chapter:

   (A) Certification that the participant's qualified investment property continues to be used in the project and if disposed of during the tax year, was not disposed of prior to expiration of its useful life;

   (B) Certification that the new jobs created by the
project's qualified investment continue to exist and are filled by persons who are residents of this state; and

(C) Such other information as the tax commissioner requires to determine continuing eligibility to claim the annual credit allowance for the project's qualified investment.

(d) Terms defined.—For purposes of this section:

(1) **New employee.**—The term “new employee” means a person residing and domiciled in this state, hired by a participant to fill a position for a job which previously did not exist in this state prior to the date on which the project's qualified investment is placed in service or use in this state. In no case shall the new employees allowed for purposes of this credit exceed the total increases in the number of persons employed by the project's participants (considered as a group) in this state. A person shall be deemed to be a “new employee” if such person’s duties in connection with the operation of the certified project are on:

(A) A regular, full-time and permanent basis.

(1) “Full-time employment” means employment for at least one hundred twenty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

(2) “Permanent employment” does not include employment that is temporary or seasonal.

(B) A part-time basis, provided such person is customarily performing such duties at least twenty hours per week for at least six months during the taxable year.

(2) **New job.**—The term “new job” means a job which did not exist in this state prior to the project's qualified investment being made, and which is filled by a new employee.

(3) **Participant.**—The term “participant” means any person who directly makes a capital investment in a certified project, or who employs persons filling the jobs
certified by the tax commissioner as being new jobs created as a direct result of the project's qualified investment.

(e) Effective date.—This section shall apply to capital investment made on or after the first day of February, one thousand nine hundred eighty-six.

§11-13C-5. Application of annual credit allowance.

(a) In general.—The aggregate annual credit allowance for the current taxable year is an amount equal to the sum of:

(1) The one-tenth part allowed under section four for qualified investment placed into service or use during a prior taxable year, plus

(2) The one-tenth part allowed under section four for qualified investment placed into service or use during the current taxable year, plus

(3) The one-tenth part allowed under section four-a for locating corporate headquarters in this state.

(b) Application of current year annual credit allowance.—The amount determined under subsection (a) shall be allowed as a credit against that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment, and shall be applied as provided in subsections (c) through (j), both inclusive.

(c) Business and occupation taxes.

(1) That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article thirteen of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by article thirteen of this chapter for the taxable year (determined before application of allowable credits against tax and the annual exemption).

(2) If the taxes due under said article thirteen are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other
activity taxable under article thirteen of this chapter, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article thirteen, for the taxable year (determined before application of any allowable credits against tax and the annual exemption), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under article thirteen of this chapter. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer, that is taxable under article thirteen of this chapter.

(3) The annual exemption allowed by section three of said article thirteen, plus any credits allowable under articles thirteen-d and thirteen-e of this chapter, shall be applied against and reduce only the portion of article thirteen taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article thirteen taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(d) Carrier income taxes.

(1) That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article twelve-a of this chapter shall first be applied to reduce up to eighty percent of the taxes imposed by article twelve-a of this chapter, for the taxable year.

(2) If the taxes due under said article twelve-a are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other
activity taxable under article twelve-a of this chapter, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article twelve-a for the taxable year, by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under article twelve-a of this chapter. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under article twelve-a of this chapter.

(e) Severance taxes.

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or other activity subject to the tax imposed by article thirteen-a of this chapter, and qualified investment in a business or activity that was subject to the tax imposed by article thirteen of this chapter prior to said first day of July, but on and after said first day of July, is subject to the tax imposed by article thirteen-a of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by article thirteen-a of this chapter for the taxable year (determined before application of any allowable credits against tax).

(2) If the taxes due under said article thirteen-a are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article thirteen-a of this chapter, the amount of such taxes which are so attributable, shall be determined by multiplying the amount of taxes due under said article thirteen-a for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer
employed in this state, whose positions are directly
attributable to the qualified investment in a business or
other activity taxable under article thirteen-a of this
chapter. The denominator of the fraction shall be the
wages, salaries and other compensation paid during the
taxable year to all employees of the taxpayer employed
in this state, whose positions are directly attributable to
the business or other activity of the taxpayer that is
taxable under article thirteen-a of this chapter.

(3) Any credits allowable under articles thirteen-d and
thirteen-e of this chapter shall be applied against and
reduce only the portion of article thirteen-a taxes not
apportioned to the qualified investment under this
article: Provided, That any excess credits may be
applied against the amount of article thirteen taxes
apportioned to the qualified investment under this
article, that is not offset by the amount of annual credit
against such taxes allowed under this article for the
taxable year, unless their application is otherwise
prohibited by this chapter.

(f) Telecommunications taxes.

(1) On and after the first day of July, one thousand
nine hundred eighty-seven, that portion of the allowable
credit attributable to qualified investment in a business
or other activity subject to the taxes imposed by article
thirteen-b of this chapter, shall first be applied to reduce
up to eighty percent of the taxes imposed by article
thirteen-b of this chapter for the taxable year (deter-
mined before application of allowable credits against
tax) and qualified investment in a business or activity
that was subject to the taxes imposed by article twelve-
a of this chapter prior to said first day of July, but on
and after said first day of July is subject to the tax
imposed by article thirteen-b of this chapter.

(2) If the taxes due under said article thirteen-b are
not solely attributable to and the direct result of the
taxpayer's qualified investment in a business or other
activity taxable under article thirteen-b of this chapter,
the amount of such taxes, which are so attributable,
shall be determined by multiplying the amount of taxes
due under said article thirteen-b for the taxable year
(determined before application of any allowable credits
against tax), by a fraction, the numerator of which is
all wages, salaries and other compensation paid during
the taxable year to all employees of the taxpayer
employed in this state whose positions are directly
attributable to the qualified investment in a business or
other activity taxable under article thirteen-b of this
chapter. The denominator of the fraction shall be the
wages, salaries and other compensation paid during the
taxable year to all employees of the taxpayer employed
in this state whose positions are directly attributable to
the business or other activity of the taxpayer that is
taxable under article thirteen-b of this chapter.

(g) Business franchise tax.

(1) On and after the first day of July, one thousand
nine hundred eighty-seven, that portion of the allowable
credit attributable to qualified investment in a business
or activity subject to the taxes imposed by article
twenty-three of this chapter, and qualified investment
in a business or activity that was subject to the taxes
imposed by article thirteen of this chapter prior to said
first day of July, but on and after said first day of July,
is subject to the tax imposed by article twenty-three of
this chapter, shall first be applied to reduce up to eighty
percent of the taxes imposed by article twenty-three of
this chapter for the taxable year (determined after
application of the credits against tax provided in section
seventeen of said article twenty-three, but before
application of any other allowable credits against tax).

(2) If the taxes due under said article twenty-three are
not solely attributable to and the direct result of the
taxpayer's qualified investment in a business or other
activity taxable under article twenty-three, for the
taxable year (determined after application of the credits
against tax provided in section seventeen of said article
twenty-three, but before application of any other
allowable credits), by a fraction, the numerator of which
is all wages, salaries and other compensation paid
during the taxable year to all employees of the taxpayer
employed in this state, whose positions are directly
attributable to the qualified investment in a business or 
other activity taxable under article twenty-three of this 
chapter. The denominator of the fraction shall be wages, 
salaries and other compensation paid during the taxable 
year to all employees of the taxpayer employed in this 
state, whose positions are directly attributable to the 
business or other activity of the taxpayer that is taxable 
under article twenty-three of this chapter.

(3) Any credits allowable under articles thirteen-d and 
thirteen-e of this chapter shall be applied against and 
reduce only the portion of article twenty-three taxes not 
apportioned to the qualified investment under this 
article: Provided, That any excess exemption or credits 
may be applied against the amount of article twenty-
three taxes apportioned to the qualified investment 
under this article that is not offset by the amount of 
annual credit against such taxes allowed under this 
article for the taxable year, unless their application is 
otherwise prohibited by this chapter.

(h) Corporation net income taxes.

(1) After application of subsections (c) through (g), 
both inclusive of this section, any unused credit shall 
next be applied to reduce up to eighty percent of the 
taxes imposed by article twenty-four of this chapter, for 
the taxable year (determined before application of 
allowable credits against tax).

(2) If the taxes due under said article twenty-four 
(determined before application of allowable credits 
against tax) are not solely attributable to and the direct 
result of the taxpayer's qualified investment, the amount 
of such taxes which are so attributable, shall be 
determined by multiplying the amount of taxes due 
under said article twenty-four for the taxable year 
(determined before application of allowable credits 
against tax), by a fraction, the numerator of which is 
all wages, salaries and other compensation paid during 
the taxable year to all employees of the taxpayer 
employed in this state whose positions are directly 
 attributable to the qualified investment. The denomina-
tor of the fraction shall be the wages, salaries and other
compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(3) Any credits allowable under article twenty-four of this chapter shall be applied against and reduce only the amount of article twenty-four taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article twenty-four taxes apportioned to the qualified investment under this article that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(i) **Personal income taxes.**

(1) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1954, as amended), a partnership or a sole proprietorship, then any unused credit (after application of subsections (c), (d), (e), (f) and (g)) shall be allowed as a credit against up to eighty percent of the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article twelve-a, article thirteen, article thirteen-a, article thirteen-b or article twenty-three of this chapter.

(2) Electing small business corporations, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) If the amount of taxes due under article twenty-one of this chapter (determined before application of allowable credits against tax) that is attributable to business, is not solely attributable to and the direct result of the qualified investment of the electing small business corporation, partnership, other unincorporated organization or sole proprietorship, the amount of such taxes which are so attributable shall be determined by multiplying the amount of taxes due under said article twenty-one (determined before application of allowable credits against tax), that is attributable to business by
a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the electing small business corporation, partnership, other unincorporated organization or sole proprietorship employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer.

No credit shall be allowed under this section against any employer withholding taxes imposed by article twenty-one of this chapter.

Ad valorem property taxes; unemployment taxes and workers' compensation premiums.

After application of subsections (a) through (i), both inclusive, of this section, any unused credit shall be applied as a rebate for payment of the sum of the following amounts:

(A) Eighty percent of the ad valorem property taxes imposed by levying bodies pursuant to article eight of this chapter, for the taxable year (including payments in lieu of such taxes), on property of the taxpayer that is directly attributable to the qualified investment (including property having a useful life of less than four years) of the taxpayer, in the new or expanded business facility of the taxpayer resulting in new jobs; plus

(B) Eighty percent of the taxes imposed by article five, chapter twenty-one-a of this code for the taxable year. If the taxes due under said article five are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of such taxes which are so attributable shall be determined by multiplying the amount of taxes due under article five, chapter twenty-one-a of this code, by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to employees of the taxpayer whose positions are directly attributable to the qualified investment, and the denominator of which is the wages, salaries and other compensation paid during the taxable year to all employees of the
taxpayer in this state; plus

(C) Twenty percent of the workers' compensation premiums imposed by article two, chapter twenty-three of this code, for the taxable year. If the premiums due under article two of said chapter twenty-three, for the taxable year, are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of such premiums which are so attributable shall be determined by multiplying the amount of premiums due under article two, chapter twenty-three of this code for the taxable year, by a fraction, the numerator of which is all wages, salaries and compensation paid during the taxable year to employees of the taxpayer whose positions are directly attributable to the qualified investment, and the numerator of which is the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, in this state.

(2) A taxpayer eligible to claim this rebate shall apply either the amount of the unused credit or the sum determined under paragraph (1), whichever is less, against the remaining twenty percent of the taxes imposed by articles twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four of this chapter, attributable to the qualified investment under this article. If any amount of rebate remains after its application against the remaining twenty percent of taxes as aforesaid, the amount remaining shall be carried forward to each ensuing tax year until used or the expiration of the twelfth subsequent tax year in which the qualified investment was placed in service or use in this state by the taxpayer.

(k) Unused credit forfeited.—If any credit remains after application of subsection (b), the amount thereof shall be forfeited. No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance, except as specifically provided in subsection (j).

(l) Effective date.—This section, as amended, shall be effective upon passage. It shall be retroactive, and shall
be in lieu of the method provided by this section for application of this credit prior to this amendment, for qualified investment made on or after the first day of March, one thousand nine hundred eighty-five.

§11-13C-6. Qualified investment.

(a) General.—The qualified investment in property purchased or leased for business expansion shall be the applicable percentage of the cost of each property purchased or leased for the purpose of business expansion which is placed in service or use in this state by the taxpayer during the taxable year.

(b) Applicable percentage.—For the purpose of subsection (a), the applicable percentage of any property shall be determined under the following table:

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<tr>
<th>Useful Life</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33 1/3%</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66 2/3%</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100%</td>
</tr>
</tbody>
</table>

The useful life of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this state by the taxpayer, determined in accordance with federal income tax law.

(c) Cost.—For purposes of subsection (a), the cost of each property purchased for business expansion shall be determined under the following rules:

(1) Trade-ins.—Cost shall not include the value of property given in trade or exchange for the property purchased for business expansion.

(2) Damaged, destroyed or stolen property.—If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.

(3) Rental property.

(A) The cost of real property acquired by written lease for a primary term of ten years or longer shall be one
hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

(B) The cost of tangible personal property acquired by written lease for a primary term of:

(i) Four years, or longer, shall be one third of the rent reserved for the primary term of the lease;

(ii) Six years, or longer, shall be two thirds of the rent reserved for the primary term of the lease; or

(iii) Eight years, or longer, shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years: Provided, That in no event shall rent reserved include rent for any year subsequent to expiration of the book life of the equipment, determined using the straight-line method of depreciation.

(4) Property purchased for multiple use.—In the case of property purchased for use as a component part of a new or expanded business taxable under article twelve-a of this chapter, and use as a component part of a new or expanded business taxable under article thirteen of this chapter, the cost thereof shall be apportioned between such businesses. The amount apportioned to each such new or expanded business for which credit is allowed under this article, shall be considered as a qualified investment subject to the conditions and limitations of this article.

(5) Self-constructed property.—In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(6) Transferred property.—The cost of property used by the taxpayer out-of-state and then brought into this state, shall be determined based on the remaining useful life of the property at the time it is placed in service or use in this state, and the cost shall be the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof taxpayer used the property outside this state. In the case of leased tangible personal property, cost shall
be based on the period remaining in the primary term of the lease after the property is brought into this state for use in a new or expanded business facility of the taxpayer, and shall be the rent reserved for the remaining period of the primary term of the lease, not to exceed twenty years, or the remaining useful life of the property (determined as aforesaid), whichever is less.

(7) Natural resources in place.—In the case of natural resources in place, the property must be capable of sustained production for a period of at least ten years. If this qualification is met, then the qualified investment is one hundred percent of the purchase price of the natural resource in place that is attributable to ten years of production, but not more than twenty years of production. If such price is not quantifiable at the time the mining operation is placed into production, cost shall be determined annually and shall be the amount of royalties actually paid to the owner of the natural resource in place during each year for a total period of ten years. The amount of such royalties multiplied by the taxpayer's new jobs percentage (determined at the time the mining operation is placed in service or use) divided by ten establishes the credit allowable each year for ten successive years beginning with the year in which the royalties were paid.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZATION, FOR RESEARCH AND DEVELOPMENT PROJECTS AND FOR HOUSING DEVELOPMENT PROJECTS.

§11-13D-1. Legislative findings and purpose.


§11-13D-3. Amount of credit allowed for industrial expansion or revitalization, 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 location of new industry in this state; the expansion,
growth and revitalization of existing industrial facilities in this state; the conduct of research and development in this state, for purposes of expanding markets for sales and uses of this state's natural resources and industrial products and the construction of residential housing are all in the public interest and promote the general welfare of the people of this state. In order to encourage capital investment in this state and thereby increase employment and economic development, there is hereby provided a business and occupation tax credit for industrial expansion and revitalization in this state, for certain research and development related expenditures in this state, and for certain housing development related expenditures in this state.


(a) Any term used in this article shall have the same meaning as when used in a comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purpose of this article, the term:

(1) "Eligible investment" means that amount determined under either section four of this article, for investment in a new or expanded or revitalized industrial facility, or under section five of this article, in the case of an eligible research and development project, or under section five-a for a qualified housing development project.

(2) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial expansion, or for the purpose of revitalizing an existing industrial facility in this state; or a taxpayer who purchases property or services (or both) for the purpose of conducting an eligible research and development project in this state or for the purpose of constructing a qualified housing development project in this state.

(3) "Eligible research and development project" means a research and development project engaged in or
conducted within this state, by a person who is engaged in this state in the business of producing natural resources or in an industrial business when such research and development project is conducted for purposes relating to the technical, economic, financial, engineering or marketing aspects of expanding markets for, and increasing sales of, this state's natural resource products, or industrial products (or both).

(4) "Industrial business" means any privilege taxable under section two-b or two-m, article thirteen of this chapter, and includes a manufacturing service taxable under section two-h of said article: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the term "industrial business" shall mean the business of manufacturing, compounding or preparing tangible personal property for sale, profit or commercial use, the business of generating electric power, and the business of providing a manufacturing service, which were taxable, respectively, under sections two-b, two-m and two-h, article thirteen of this chapter, on the first day of January, one thousand nine hundred eighty-five.

(5) "Industrial facility" means any factory, mill, plant, refinery, warehouse, buildings or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility in an industrial business.

(6) "Industrial revitalization" means capital investment in an industrial facility located in this state to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with the operation of such facility in an industrial business of the taxpayer, including the acquisition of any real property necessary to the industrial revitalization.

(7) "Industrial expansion" means capital investment in a new or expanded industrial facility in this state.

(8) "Industrial taxpayer" means any person subject to
business and occupation taxes under article thirteen of this chapter, exercising any privilege taxable under section two-b or two-m of said article thirteen, or providing a manufacturing service taxable under section two-h of said article thirteen: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, "industrial taxpayer" shall mean any person subject to tax under section two-m, article thirteen of this chapter; or any person subject to tax under article thirteen-a or twenty-three of this chapter engaging in any activity that was taxable under section two-b, article thirteen of this chapter, on the first day of January, one thousand nine hundred eighty-five; or any person taxable under article twenty-three of this chapter providing a manufacturing service that was taxable under section two-h, article thirteen of this chapter on the first day of January, one thousand nine hundred eighty-five.

(9) "Manufacturing service" means a privilege that would be taxable under section two-b, article thirteen of this chapter, if title to the raw materials used in the manufacturing process was vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(10) Subject to paragraph (13) below, "property purchased for an eligible research and development project" means real property, and improvements thereto, and tangible personal property, but only if such real or personal property is constructed or purchased on or after the first day of July, one thousand nine hundred eighty-five, for use as a component part of an eligible research and development project which is located within this state on or after the first day of July, one thousand nine hundred eighty-five. This term includes only tangible personal property with respect to which depreciation or amortization, in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax liability of the purchaser under article twenty-one or twenty-four of this chapter. Property acquired by written lease for a term of ten years or longer, if used as a component part of an
eligible research and development project, shall be included within this definition.

(11) Subject to paragraph (13) below, "property purchased for industrial expansion" means real property, and improvements thereto, and tangible personal property, but only if such property was constructed, or purchased, on or after the first day of July, one thousand nine hundred sixty-nine, for use as a component part of a new or expanded industrial facility (as defined in paragraph five of this subsection) located within this state. This term includes only tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax liability of the industrial taxpayer under articles twenty-one or twenty-four of this chapter, and has a useful life, at the time such property is placed in service or use in this state, of four years or more. Property acquired by written lease, for a primary term of ten years or longer, if used as a component part of a new or expanded industrial facility, shall be included within this definition.

(12) Subject to paragraph (13) below, "property purchased for industrial revitalization" means real property, and improvements thereto, and new tangible personal property, but only if such property was constructed, or purchased, on or after the first day of July, one thousand nine hundred eighty-one, for use as a component part of an ongoing industrial facility (as defined in subdivision (5) of this subsection) located within this state. This term includes only tangible personal property with respect to which depreciation is allowable in determining the personal income tax or corporation net income tax liability of the industrial taxpayer under article twenty-one or twenty-four of this chapter, and has a useful life at the time the property is placed in service or use in this state of four years or more. Property acquired by written lease, for a primary term of ten years or longer, if used as a component part of an industrial revitalization, shall be included within this definition.
(13) "Property purchased for industrial expansion," "property purchased for industrial revitalization" and "property purchased for an eligible research and development project" and "property purchased for a qualified housing development project" shall not include:

(A) Repair costs including materials used in the repair, unless, for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(B) Motor vehicles licensed by the department of motor vehicles;

(C) Airplanes;

(D) Off-premise transportation equipment;

(E) Property which is primarily used outside this state; and

(F) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his industrial business in this state, or which property was previously designated "property purchased for industrial expansion" or "property purchased for industrial revitalization," or "property purchased for an eligible research and development project," or "property purchased for a qualified housing development project" and used to qualify for business and occupation tax credit for industrial expansion or revitalization, or for an eligible research and development project, or for a qualified housing development project.

(14) Subject to subdivision (13) above, property purchased for a qualified housing development project means real property, and improvements thereto, and tangible personal property incorporated into real property (whether or not attached thereto), but only if such real or tangible personal property was constructed, or purchased, on or after the first day of July, one thousand nine hundred eighty-six, for use as a component part of a housing development project (as defined in subdivision five-a of this subsection) located within this state.
(15) Property shall be deemed to have been purchased prior to a specified date only if:

(A) The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the taxpayer prior to the specified date;

(B) The machinery or equipment was owned by the taxpayer prior to the specified date or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to such date; or

(C) In the case of leased property, there was a binding written lease or contract to lease identifiable property in effect prior to the specified date.

(16) "Taxpayer" means any person taxable under article thirteen of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, "taxpayer" shall mean any person taxable under article thirteen, thirteen-a or twenty-three of this 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.

(a) Credit allowed.—There shall be allowed to eligible taxpayers a credit against the taxes imposed by article thirteen, thirteen-a or twenty-three of this chapter, for industrial expansion or revitalization, and for eligible research and development projects and for qualified housing development projects. The amount of credit shall be determined as hereinafter provided in this section.

(b) Qualified investment for industrial expansion; July 1, 1969 - March 31, 1978.—For property purchased for industrial expansion during the period beginning the first day of July, one thousand nine hundred sixty-nine, and ending the thirty-first day of March, one thousand nine hundred seventy-eight, the amount of allowable
credit shall be equal to ten percent of the qualified investment (as determined in section four) made for industrial expansion, and shall reduce the business and occupation tax liability of the industrial taxpayer under article thirteen of this chapter, subject to the following conditions and limitations:

(1) The amount of credit allowable shall be applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the qualified investment is first placed in service or use in this state.

(2) The amount of annual credit allowed shall not reduce the business and occupation tax under article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

(3) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Such unused credit shall be forfeited.

(c) Qualified investment for industrial expansion; April 1, 1978-February 28, 1985.—For property purchased for industrial expansion during the period beginning the first day of March, one thousand nine hundred seventy-eight, and ending the twenty-eighth day of February, one thousand nine hundred eighty-five, the amount of allowable credit shall be equal to ten percent of the qualified investment (as determined in section four) made for industrial expansion, and shall reduce the business and occupation tax liability of the industrial taxpayer under sections two-b, two-h and two-m, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The amount of credit allowable shall be applied over a ten-year period, at the rate of one tenth thereof per taxable year, beginning with the taxable year in which the qualified investment is first placed in service or use in this state.
(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under sections two-b, two-h and two-m, article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year, in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter: Provided, That the tax under section two-h of said article thirteen, shall not be reduced by more than fifty percent of the tax attributable to the privilege of manufacturing for another, which privilege would be taxable under section two-b of said article thirteen, if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(3) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Such unused credit shall be forfeited.

(d) Eligible investment for industrial revitalization; July 1, 1981-February 28, 1985.—For property purchased for industrial revitalization during the period beginning the first day of July, one thousand nine hundred eighty-one, and ending the twenty-eighth day of February, one thousand nine hundred eighty-five, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined under section four) made for industrial revitalization, and shall reduce the business and occupation tax under sections two-b and two-h, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the eligible investment is first placed in service or use in this state.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by
section two, article thirteen of this chapter, under sections two-b and two-h of said article, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter:

Provided, That the tax under section two-h of said article thirteen, shall not be reduced by more than fifty percent of the tax attributable to the privilege of manufacturing for another, which privilege would be taxable under section two-b of said article thirteen, if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(3) When in any taxable year the eligible industrial taxpayer is entitled to claim credit under both this subsection (d) and under subsection (b) or (c), or both, of this section, the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in subdivision (2) of this subsection (d).

(4) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this section for any property purchased for industrial revitalization prior to the first day of July, one thousand nine hundred eighty-one.

(e) Eligible investment for industrial expansion or revitalization after February 28, 1985.—For property purchased for industrial expansion or industrial revitalization on or after the first day of March, one thousand nine hundred eighty-five, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined in section four) made for industrial expansion or industrial revitalization, and shall reduce the business and occupation tax imposed under article thirteen of this chapter subject to the following conditions and limitations:
(1) The amount of credit allowable shall be applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the eligible investment is first placed in service or use in this state.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the industrial taxpayer is entitled to claim credit under this subsection (e) and under subsection (b), (c) or (d) of this section (or any combinations thereof), the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in subdivision (2) of this subsection (e).

(4) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Such unused credit shall be forfeited.

(5) When in any taxable year the industrial taxpayer is entitled to claim credit under this article and article thirteen-e of this chapter, the total amount of all such credits allowable for the taxable year shall not reduce the amount of business and occupation taxes imposed by article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year, computed before allowance of the annual exemption allowed by section three, article thirteen of this chapter.

(6) No credit shall be allowed under this subsection (e) for any property purchased on or after the first day of March, one thousand nine hundred eighty-five, for which credit is allowed under article thirteen-c of this chapter.

(7) No credit shall be allowed under this subsection (e) for any property purchased for industrial expansion
or industrial revitalization prior to the first day of March, one thousand nine hundred eighty-five.

(f) Eligible investment for research and development project after June 30, 1985.—For property and services purchased for an eligible research and development project on or after the first day of July, one thousand nine hundred eighty-five, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined in section five) made for an eligible research and development project, and shall reduce the business and occupation taxes under sections two-a, two-b, two-m, article thirteen of this chapter, subject to the following conditions and limitations:

1. The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the eligible investment is first placed in service or use in this state, or is expensed for federal income tax purposes.

2. The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under section two-a of said article, on the business of producing natural resources; under section two-b of said article thirteen, on the business of manufacturing, compounding or preparing tangible personal property for sale; under section two-h of said article thirteen on the providing of a manufacturing service; and under section two-m of said article thirteen, on the business of generating electric power, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

3. When in any taxable year the eligible taxpayer is entitled to claim credit under both this subsection (f) and subsection (b), (c), (d) or (e) of this section (or any combinations thereof), the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in subdivision (2) of this subsection.
(f).

(4) No carryover to a subsequent tax year or carry-back to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this subsection (f) for any property purchased for an eligible research and development project, when such property is used to determine the eligible investment under section four of this article, or determine the amount of credit allowable under article thirteen-c of this chapter.

(6) No credit shall be allowed under this subsection (f) for any property purchased for research and development prior to the first day of July, one thousand nine hundred eighty-five.

(g) Eligible investment for qualified housing development project after June 30, 1986. — For property and services purchased for a qualified housing development project on or after the first day of July, one thousand nine hundred eighty-six, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined in section five-a) made for a qualified housing development project, and shall reduce the business and occupation taxes under sections two-c and two-e, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which any combination of residential housing units (as defined in section five-a of this article) available for occupancy or occupied in the qualified housing development project is five or more residential housing units.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under section two-c of said article on the business of selling tangible property and under section two-e on the
business of contracting below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the eligible taxpayer is entitled to claim credit under both this subsection (g) and subsection (b), (c), (d), (e) or (f) of this section (or any combinations thereof), the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in subdivision (2) of this subsection (g).

(4) No carryover to a subsequent tax year or carry back to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this subsection (g) for any property purchased for an eligible housing development project, when such property is used to determine the eligible investment under section four of this article, or determine the amount of credit allowable under article thirteen-c of this chapter.

(6) No credit shall be allowed under this subsection (g) for any property purchased for an eligible housing development project, when such property is used to determine the eligible investment under section four of this article, or determine the amount of credit allowable under article thirteen-c of this chapter.

(h) Credit limitation.—The aggregate amount of credit allowable under this article and article thirteen-e of this chapter, against the taxes imposed by article thirteen of this chapter for the taxable year, shall in no event exceed fifty percent of the tax due for the taxable year, computed prior to application of the tax credits provided by this article and articles thirteen-c and thirteen-e of this chapter, and the annual exemption allowed provided by section three, article thirteen of this chapter.

(i) Application of credit after June 30, 1987. — On and
after the first day of July, one thousand nine hundred eighty-seven, the credits allowed under subsections (b), (c), (d), (e), (f) and (g) of this section shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter: Provided, That this credit shall not reduce the sum of the net tax liability of the taxpayer under articles thirteen, thirteen-a and twenty-three of this chapter, for the taxable year below fifty percent of the amount thereof, determined before application of the credits allowed by this article and article thirteen-c or thirteen-e, or both, of this chapter.

§11-13D-5a. Eligible investment for qualified housing development project.

(a) General.—The eligible investment in a qualified housing development project shall be the sum of the applicable percentage of the cost of land and depreciable property purchased for the construction of a qualified housing development project, which is placed in service or use in this state during the taxable year.

(b) Applicable percentage of property.—For the purpose of subsection (a), the applicable percentage for land and depreciable property shall be determined under the following table:

<table>
<thead>
<tr>
<th>Useful Life</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 4 years</td>
<td>0</td>
</tr>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33-1/3%</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66-2/3%</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100%</td>
</tr>
</tbody>
</table>

The useful life of any property for purposes of this section shall be determined as of the date such property is first placed in service or use in this state by the taxpayer, determined in accordance with federal income tax law.

(c) Cost of property.—For purposes of subsection (a), the cost of each item of property purchased for the conduct of an eligible housing development project shall be determined under the following rules:
(1) Trade-ins.—Cost shall not include the value of property given in trade or exchange for the property purchased for construction of a qualified housing development project.

(2) Damaged, destroyed or stolen property.—If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.

(3) Self-constructed property.—In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(d) “Qualified housing development” or “qualified housing development project” means a residential housing development located in this state that contains five or more single-family contiguous residential housing units or multi-family residential buildings containing five or more residential housing units, which are contiguously located.

(e) “Residential housing unit” means any single-family dwelling or a single-family unit in a multi-family dwelling that is constructed for sale or lease to nontransients for use and occupancy as their primary permanent residence.

§11-13D-6. Forfeiture of unused tax credits; redetermination of credit required.

(a) Disposition of property or cessation of use.—If during any taxable year, property with respect to which a tax credit has been allowed under this article:

(1) Is disposed of prior to the end of its useful life, as determined under section four, five or five-a of this article; or

(2) Ceases to be used in the new or expanded or revitalized industrial business, or in the eligible research and development project, or in the qualified housing development project, of the taxpayer in this state prior to the end of its useful life, as determined
under said section four, five or five-a, then the unused portion of the credit allowed for such property shall be forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed under said section three, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business of the taxpayer. Taxpayer shall then file a reconciliation statement with its annual business and occupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(b) Cessation of operation of industrial facility or eligible research and development project or qualified housing development project.—If during any taxable year, the taxpayer ceases operation of an industrial facility in this state, or of an eligible research and development project, or a qualified housing development project, for which credit was allowed under this article, or article thirteen-c of this chapter prior to its repeal, before expiration of the useful life of the property with respect to which tax credit has been allowed under this article or article thirteen-c of this chapter prior to its repeal, then the unused portion of the allowed credit shall be forfeited for the taxable year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section three, to correspond
with the percentage of cost allowable for the period of
time that the property was actually used in this state
in the industrial business of the taxpayer. Taxpayer
shall then file a reconciliation statement with its annual
business and occupation tax return for the year in which
the forfeiture occurs and pay any additional business
and occupation taxes owed due to reduction of the
amount of credit allowable for such earlier years, plus
interest and any applicable penalties: Provided, That on
and after the first day of July, one thousand nine
hundred eighty-seven, the phrase “taxes imposed by
article twelve-a or thirteen (or both) of this chapter”
shall mean “taxes imposed by articles thirteen, thirteen-
a and twenty-three of this chapter (or any one or
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.
(a) The tax imposed by this article shall be refunded to any person who shall buy in quantities of twenty-five gallons or more, at any one time, tax-paid gasoline or special fuel, when consumed for the following purposes:

1. As a special fuel for internal combustion engines not operated upon highways of this state; or

2. Gasoline consumed to operate tractors and gas engines or threshing machines for agricultural purposes, when such operation is not, in whole or in part, upon the highways of this state; or

3. Gasoline used by any railway company, subject to regulation by the public service commission of West Virginia, for any purpose other than upon the highways of this state; or

4. Gasoline consumed in the business of manufacturing or producing natural resources or in mining or drilling therefor, or in the transportation of natural resources solely by means of unlicensed vehicles or vehicles licensed under the motor vehicle laws of this state, either as a motor fuel or for any other purpose and which gasoline is not in any part used upon the highways of this state; or

5. Gasoline consumed in motorboats or other watercraft operated upon the navigable waters of this state; or

6. Gasoline or special fuel used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for such equipment or separate tank for such a motor, the person claiming the refund may present to the tax commissioner a statement of his claim and shall be allowed a refund for fuel used in operating a power take-off unit on a cement mixer truck or garbage truck equal to twenty-five percent of the tax imposed by this article paid on all fuel used in such a truck.

(b) Such tax shall be refunded upon presentation to
the commissioner of an affidavit accompanied by the
original or top copy sales slips or invoices, or certified
copies thereof, from the distributor or producer or retail
dealer, showing such purchases, together with evidence
of payment thereof, which affidavit shall set forth the
total amount of such gasoline or special fuel purchased
and consumed by such user, other than upon any
highways of this state, and how used; and the tax
commissioner upon the receipt of such affidavit and
such paid sales slips or invoices shall cause to be
refunded such tax paid on gasoline or special fuel
purchased and consumed as aforesaid.

(c) The right to receive any refund under the provi-
sions of this section shall not be assignable and any
assignment thereof shall be void and of no effect, nor
shall any payment be made to any person other than the
original person entitled thereto using gasoline or special
fuel as hereinbefore in this section set forth. The tax
commissioner shall cause a refund to be made under the
authority of this section only when the claim for such
refund is filed with the tax commissioner, upon forms
prescribed by the tax commissioner, within six months
from the month of purchase or delivery of the gasoline
or special fuel, except that any application for refund
made under authority of subdivision (2) above shall be
filed within twelve months from the month of purchase
or delivery of such gasoline or special fuel. Any claim
for a refund not timely filed shall not be construed to
be or constitute a moral obligation of the state of West
Virginia for payment. Such claim for refund shall also
be subject to the provisions of section fourteen, article
ten of this chapter.

(d) Effective date. — The provisions of this section as
hereby amended shall apply to all gasoline and special
fuels purchased or delivered on or after the first day of
July, one thousand nine hundred eighty-six, and the
provisions of this section in effect prior to the said first
day of July, shall apply to gasoline and special fuels
purchased or delivered prior to the first day of July, one
 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.

ARTICLE 21. PERSONAL INCOME TAX.


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
shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred eighty-six, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred eighty-five, and thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred eighty-six, shall be 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.

Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States or to the Internal Revenue Code or to the federal income tax law shall mean the provisions of the laws of the United States related to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred eighty-six, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred eighty-five, and thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred eighty-six, shall be given effect.

§11-24-3a. Specific terms defined.

For purposes of this article:

(1) Business income.—The term "business income" means income arising from transactions and activity in
the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) Commercial domicile.—The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) Compensation.—The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) Corporation.—The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law.

(5) Delegate.—The term "delegate" in the phrase "or his delegate," when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly, by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulation promulgated thereunder.

(6) Domestic corporation.—The term "domestic corporation" means any corporation organized under the laws of West Virginia and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred sixty-three. Every other corporation is a foreign corporation.

(7) Engaging in business.—The term "engaging in business" or "doing business" means any activity of a corporation which enjoys the benefits and protection of government and laws in this state.

(8) Federal Form 1120.—The term "Federal Form 1120" means the annual federal income tax return of any corporation made pursuant to Section 6012, 6037, 6038, 6046, or other applicable section of the United
States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a corporation, and filed with the Federal Internal Revenue Service. In the case of a corporation that is exempt from federal income taxes but which has taxable unrelated business income, it means Federal Form 990T. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(9) Fiduciary.—The term “fiduciary” means, and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(10) Fiscal year.—The term “fiscal year” means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(11) Includes and including.—The terms “includes” and “including” when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(12) Nonbusiness income.—The term “nonbusiness income” means all income other than business income.

(13) Person.—The term “person” is to be deemed interchangeable with the term “corporation” in this section.

(14) Pro forma return.—The term “pro forma return” when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of an affiliated group.

(15) Public utility.—The term “public utility” means any business activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the
(16) *Sales.*—The term "sales" means all gross receipts of the taxpayer that are "business income," as defined in this section.

(17) *State.*—The term "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(18) *Taxable year.*—The term "taxable year" means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(19) *Tax.*—The term "tax" includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.

(20) *Tax commissioner.*—The term "tax commissioner" means the tax commissioner of the state of West Virginia or his delegate.

(21) *Taxpayer.*—The term "taxpayer" means a corporation subject to the tax imposed by this article.

(22) *This code.*—The term "this code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(23) *This state.*—The term "this state" means the state of West Virginia.

(24) *West Virginia taxable income.*—The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted, as provided in section six of this article: *Provided,* That in the case of a corporation having income from business activity which is taxable without this state, its "West Virginia taxable income" shall be such portion of its taxable income as so defined and adjusted as is allocated or apportioned to this state under the provisions of section seven of this article.
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 partnership may carry on, conduct or transact any business in
(a) No corporation, limited partnership or association required to register with the secretary of state in order to conduct business within the state may conduct or transact any business in this state under any assumed name, or under any designation, name or style, corporate or otherwise, other than the name established by the certificate of incorporation, authority, association or limited partnership, unless the corporation, limited partnership
or association files in the office of the secretary of state a
certificate of registration of true name setting forth the
name or names under which such business is, or is to be,
conducted or transacted, with the address of the principal
office within the state or, if no office is maintained within
the state, the address of the principal office in the state in
which the corporation, association or limited partnership
is established.

(b) Two executed originals of the application for true
name registration, shall be delivered to the secretary of
state. If the filing officer finds that the application for true
name registration conforms to law, he or she shall, when
all fees have been paid as prescribed by law, (i) endorse
on each of the originals the word “filed” and the month,
day and year of the filing; (ii) file one of the
originals; and (iii) issue to the applicant the certificate of registra-
tion of true name with the other original attached.

(c) A domestic corporation, limited partnership or
association having its principal office within the state shall
file a certified copy of the certificate of true name with
the clerk of the county commission of the county in which
the principal office is located. A foreign corporation, limit-
ed partnership or association having its principal office
outside the state shall file a certified copy of the certificate
with the clerk of the county commission of a county in
which its principal business is transacted.

(d) The secretary of state shall keep an alphabetical
index of all persons filing certificates provided for in this
section.

§47-8-5. Penalties for violation of §47-8-2.

Any individual, sole proprietorship, general partner-
ship, corporation, limited partnership or association or
other person owning, carrying on, conducting or trans-
acting business as aforesaid who willfully fails to comply
with the provisions of section two or four of this article
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than twenty-five nor more
than one hundred dollars, or imprisoned in the county
jail for a term not exceeding thirty days or both fined and
imprisoned.
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 is authorized to issue permits to counties and municipalities for the location of containers on rights-of-way of state maintained roads and highways for the collection of trash and garbage: Provided, That by the issuance of these permits, counties and municipalities will not be in direct competition with private common carriers. Private common carriers are carriers that are regulated by the public service commission. Such containers may be located on road and highway rights-of-way only when authorized in writing by the commissioner or his agent in accordance with rules promulgated by the commissioner in accordance with chapter twenty-nine-a of this code. Such rules shall take into consideration the safety of travelers on the roads and highways of this state and the elimination of unsightly conditions and health hazards. Such containers may not be located on controlled-access or interstate highways.

(b) The written authority given by the commissioner
is no guarantee that the state is the owner of the land
upon which a container is to be located and if any ques-
tion exists concerning ownership of such land, the issu-
ance of such written authority may not be granted until
the county or municipality certifies that written permi-
sion to locate the container has been obtained from any
person claiming an interest in the land if such person's
whereabouts can be determined.

(c) Whenever any county or municipality fails to
comply with the rules promulgated by the commissioner
or of any order of the commissioner for the removal or
relocation of a container, the permit for such container
shall be revoked and, if not removed by the county or
municipality, the commissioner may remove such con-
tainer and charge the expense of removal to the county
or municipality failing to comply with the rules or order
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.
2. Creation, Alteration and Termination of Common Interest Communities.
4. Protection of Purchasers.

ARTICLE 1. GENERAL PROVISIONS.
PART I. DEFINITIONS AND OTHER GENERAL PROVISIONS.


§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—Exception for nonresident planned communities.

§36B-1-207. Applicability to nonresidential planned communities.

PART I. DEFINITIONS AND OTHER GENERAL PROVISIONS.


1 This chapter may be cited as the "Uniform Common Interest Ownership Act."

§36B-1-102. Applicability.

1 Applicability of this chapter is governed by Part II of this article.

§36B-1-103. Definitions.

1 In the declaration and bylaws (section 3-106), unless specifically provided otherwise or the context otherwise requires, and in this chapter:

4 (1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the
(2) "Allocated interests" means the following interests allocated to each unit: (i) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association; (ii) in a cooperative, the common expense liability and the ownership interest and votes in the association; and (iii) in a planned community, the common expense liability and votes in the association.

(3) "Association" or "unit owners' association" means the unit owners' association organized under section 3-101 of this chapter.

(4) "Common elements" means (i) in a condominium or cooperative, all portions of the common interest community other than the units; and (ii) in a planned community, any real estate within a planned community owned or leased by the association, other than a unit.

(5) "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 2-107 of this chapter.
(7) "Common interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration. "Ownership of a unit" does not include holding a leasehold interest of less than twenty years in a unit, including renewal options.

(8) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interest in the common elements are vested in the unit owners.

(9) "Conversion building" means a building that at any time before creation of the common interest community was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(10) "Cooperative" means a common interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of his ownership interest in the association to exclusive possession of a unit.

(11) "Dealer" means a person in the business of selling units for his own account.

(12) "Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of or (ii) reserves or succeeds to any special declarant right.

(13) "Declaration" means any instruments, however denominated, that create a common interest community, including any amendments to those instruments.

(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a common interest community; (ii) create units, common elements, or limited
common elements within a common interest community;
(iii) subdivide units or convert units into common elements;
or (iv) withdraw real estate from a common interest community.
(15) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.
(16) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.
(17) "Identifying number" means a symbol or address that identifies only one unit in a common interest community.
(18) "Leasehold common interest community" means a common interest community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the common interest community or reduce its size.
(19) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section 2-102 (2) or (4) for the exclusive use of one or more but fewer than all of the units.
(20) "Master association" means an organization described in section 2-120, whether or not it is also an association described in section 3-101.
(21) "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a common interest community not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the common interest community is located.
(22) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In the case of a trust, the corpus of which is real estate, however, "person" means the beneficiary of the trust rather than the trust or the trustee.
“Planned community” means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

“Proprietary lease” means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

“Purchaser” means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest (including renewal options) of less than twenty years, or (ii) as security for an obligation.

“Real estate” means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interest that by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. “Real estate” includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

“Residential purposes” means use for dwelling or recreational purposes, or both.

“Security interest” means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

“Special declarant rights” means rights reserved for the benefit of a declarant to (i) complete improvements indicated on plats and plans filed with the declaration (section 2-109) or, in a cooperative, to complete improvements described in the public offering statement pursuant to section 4-103(a)(2); (ii) exercise any development right (section 2-110); (iii) maintain sales offices, management offices, signs advertising the common interest community, and models (section 2-115); (iv) use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the
common interest community (section 2-116); (v) make the
common interest community subject to a master association
(§2-120); (vi) merge or consolidate a common interest
community with another common interest community of
the same form of ownership (§2-121); or (vii) appoint
or remove any officer of the association or any master
association or any executive board member during any
period of declarant control (§3-103(d)).

(30) "Time share" means a right to occupy a unit or any
of several units during (5) or more separated time periods
over a period of at least (5) years, including renewal options,
whether or not coupled with an estate or interest in a
common interest community or a specified portion thereof.

(31) "Unit" means a physical portion of the common
interest community designated for separate ownership or
occupancy, the boundaries of which are described pursuant
to §2-105(a)(5). If a unit in a cooperative is owned by a
unit owner or is sold, conveyed, voluntarily or involuntarily
encumbered, or otherwise transferred by a unit owner, the
interest in that unit which is owned, sold, conveyed,
encumbered, or otherwise transferred is the right to
possession of that unit under a proprietary lease, coupled
with the allocated interests of that unit, and the
association's interest in that unit is not thereby affected.

(32) "Unit owner" means a declarant or other person
who owns a unit, or a lessee of a unit in a leasehold common
interest community whose lease expires simultaneously
with any lease, the expiration or termination of which will
remove the unit from the common interest community, but
does not include a person having an interest in a unit solely
as security for an obligation. In a condominium or planned
community, the declarant is the owner of any unit created
by the declaration. In a cooperative, the declarant is treated
as the owner of any unit to which allocated interests have
been allocated (§2-107) until that unit has been
conveyed to another person.

§36B-1-104. Variation by agreement.

Except as expressly provided in this chapter, provisions
herein may not be varied by agreement, and rights
conferred may not be waived. A declarant may not act
under a power of attorney, or use any other device, to evade
§36B-1-105. Separate titles and taxation.

(a) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is real estate for all purposes, that interest is personal property. (That interest is subject to the provisions of all homestead exemptions from taxation provided by law, even if it is personal property.)

(b) In a condominium or planned community:

(1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(2) If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

(c) Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(d) If there is no unit owner other than a declarant, the real estate comprising the common interest community may be taxed and assessed in any manner provided by law.

§36B-1-106. Applicability of local ordinances, regulations and building codes.

(a) A building code may not impose any requirement upon any structure in a common interest community which it would not impose upon a physically identical development under a different form of ownership.

(b) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

(c) Except as provided in subsections (a) and (b) of this
section, the provisions of this chapter do not invalidate or modify any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate.

§36B-1-107. Eminent domain.

(a) If a unit is acquired by eminent domain, or part of a unit is acquired by eminent domain, leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (i) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration and (ii) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the
owners of the units to which that limited common element was allocated at the time of acquisition.

(d) The court decree must be recorded in every county in which any portion of the common interest community is located.

§36B-1-108. Supplemental general principles of law applicable.

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

§36B-1-109. Construction against implicit repeal.

This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§36B-1-110. Uniformity of application and construction.

This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§36B-1-111. Unconscionable agreement or term of contract.

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, must be afforded a reasonable opportunity to present evidence as to:
(1) The commercial setting of the negotiations;
(2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy, inability to understand the language of the agreement, or similar factors;
(3) The effect and purpose of the contract or clause; and
(4) If a sale, any gross disparity, at the time of contracting, between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

§36B-1-112. Obligation of good faith.

Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

§36B-1-113. Remedies to be liberally administered.

(a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.
(b) Any right or obligation declared by this chapter is enforceable by judicial proceeding.

§36B-1-114. Adjustment of dollar amounts.

(a) From time to time the dollar amounts specified in sections 1-203 and 4-101(b)(7) must change, as provided in subsections (b) and (c), according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: United States City Average, All Items 1967 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the “Index”). The Index for December, 1979, which was 230, is the Reference Base Index.
(b) The dollar amounts specified in sections 1-203 and 4-101(b)(7), and any amount stated in the declaration pursuant to those sections, must change July 1 of each year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is ten percent or more, but

(i) The portion of the percentage change in the Index in excess of a multiple of ten percent must be disregarded and the dollar amounts shall change only in multiples of ten percent of the amounts appearing in this chapter on the date of enactment;

(ii) The dollar amounts must not change if the amounts required by this section are those currently in effect pursuant to this chapter as a result of earlier application of this section; and

(iii) In no event may the dollar amounts be reduced below the amounts appearing in this chapter on the date of enactment.

(c) If the Index is revised after December, 1979, the percentage of change pursuant to this section must be calculated on the basis of the revised Index. If the revision of the Index Changes the Reference Base Index, a revised Reference Base Index must be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

PART II. APPLICABILITY.

§36B-1-201. Applicability to new common interest communities.

Except as provided in sections 1-202 and 1-203, this chapter applies to all common interest communities created within this state after the effective date of this chapter. The provisions of chapter one hundred fifty-three, acts of the Legislature, one thousand nine hundred sixty-three, chapter one hundred twenty-nine, acts of the Legislature, one thousand nine hundred eighty, and chapter thirty-
eight, acts of the Legislature, one thousand nine hundred eighty-four, do not apply to common interest communities created after the effective date of this chapter.

§36B-1-202. Same—Exception for small cooperatives.

If a cooperative contains only units restricted to nonresidential use, or contains no more than twelve units and is not subject to any development rights, it is subject only to sections 1-106, (applicability of local ordinances, regulations, and building codes) and 1-107 (eminent domain) of this chapter, unless the declaration provides that the entire chapter is applicable.

§36B-1-203. Same—Exception for small and limited expense liability planned communities.

If a planned community:

1. (1) Contains no more than twelve units and is not subject to any development rights; or
2. (2) Provides, in its declaration, that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed $100, as adjusted pursuant to section 1-114 (adjustment of dollar amounts) it is subject only to sections 1-105 (separate titles and taxation) 1-106 (applicability of local ordinances, regulations and building codes) and 1-107 (eminent domain) unless the declaration provides that this entire chapter is applicable.

§36B-1-204. Applicability to preexisting common interest communities.

(a) Except as provided in section 1-205 (Same—Exception for small preexisting cooperatives and planned communities), sections 1-105 (Separate titles and taxation), 1-106 (Applicability of local ordinances, regulations and building codes), 1-107 (Eminent domain), 2-103 (Construction and validity of declaration and bylaws), 2-104 (Description of units), 2-121 (Merger or consolidation of common interest communities), 3-102(a)(1) through (6) and (11) through (16) (Powers of unit owners’ association), 3-111 (Tort and contract liability), 3-116 (Lien for assessments), 3-118 (Association records), 4-109 (Resales of units), and 4-117 (Effect of violation on rights of action;
attorney's fees), and section 1-103 (Definitions) to the extent necessary in construing any of those sections, apply to all common interest communities created in this state before the effective date of this chapter; but those sections apply only with respect to events and circumstances occurring after the effective date of this chapter and do not invalidate existing provisions of the declaration, bylaws or plats or plans of those common interest communities.

(b) The provisions of chapter one hundred fifty-three, Acts of the Legislature, one thousand nine hundred sixty-three, chapter one hundred twenty-nine, Acts of the Legislature, one thousand nine hundred eighty-four, do not apply to condominiums or other common interest communities created after the effective date of this chapter and do not invalidate any amendment to the declaration, rules, bylaws, plats and plans and code of regulations of any condominium or common interest community created before the effective date of this chapter if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter one hundred fifty-three, acts of the Legislature, one thousand nine hundred sixty-three. If the amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this state, but the public offering statement provisions, (sections 4-102 through 4-109) apply to all contracts for the disposition thereof signed in this state by any party unless exempt under section 4-101(b).

(d) The provisions of this chapter shall apply to all condominiums or common interest communities to the extent such provisions conflict or are inconsistent with the provisions of chapter one hundred fifty-three, acts of the Legislature, one thousand nine hundred sixty-three: Provided, That the provisions of this chapter shall not modify, limit or nullify any rights, duties or obligations created or existing under any declaration, bylaws or plats or plans of condominiums created in this state before the 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 this state before the effective date of this chapter contains no more than twelve units and is not subject to any development rights, it is subject only to sections 1-105 (separate titles and taxation), 1-106 (applicability of local ordinances, regulations and building codes), and 1-107 (eminent domain) unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of section 1-206, in which case all the sections enumerated in section 1-204 apply to that cooperative or planned community.

§36B-1-206. Same—Amendments to governing instruments.

(a) In the case of amendments to the declaration, bylaws or plats and plans of any common interest community created before the effective date of this chapter:

(1) If the result accomplished by the amendment was permitted by law prior to this chapter, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(2) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law prior to this chapter, the amendment may be made under this chapter.

(b) An amendment to the declaration, bylaws or plats and plans authorized by this section to be made under this chapter must be adopted in conformity with applicable law and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

§36B-1-207. Applicability to nonresidential planned communities.

This chapter does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the chapter does
apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted, only if the declaration so provides or the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

**ARTICLE 2. CREATION, ALTERATION AND TERMINATION 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-2-108. 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-2-117. 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.


(a) A common interest community may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the declaration.

(b) In a condominium, a declaration or an amendment to
a declaration, adding units may not be recorded unless (i) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent registered engineer, surveyor or architect.

§36B-2-102. Unit boundaries.

Except as provided by the declaration:

(1) If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to paragraph (2), all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

§36B-2-103. Construction and validity of declaration and bylaws.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to section 3-102(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails
except to the extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

§36B-2-104. Description of units.

A description of a unit which sets forth the name of the common interest community, the recording data for the declaration, the county in which the common interest community is located, and the identifying number of the unit, is a legally sufficient description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws.

§36B-2-105. Contents of declaration.

(a) The declaration must contain:

(1) The names of the common interest community and the association and a statement that the common interest community is either a condominium, cooperative or planned community;

(2) The name of every county in which any part of the common interest community is situated;

(3) A legally sufficient description of the real estate included in the common interest community;

(4) A statement of the maximum number of units that the declarant reserves the right to create;

(5) In a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms and its location within a building if it is within a building containing more than one unit;

(6) A description of any limited common elements, other than those specified in section 2-102(2) and (4), as provided in section 2-109(b)(10) and, in a planned community, any real estate that is or must become common elements;

(7) A description of any real estate, except real estate
subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in section 2-102(2) and (4), together with a statement that they may be so allocated;

(8) A description of any development rights (section 1-103(14)) and other special declarant rights (section 1-103(29)) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(9) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(10) Any other conditions or limitations under which the rights described in paragraph (8) may be exercised or will lapse;

(11) An allocation to each unit of the allocated interests in the manner described in section 2-107;

(12) Any restrictions (i) on use, occupancy and alienation of the units, and (ii) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation or casualty loss to the unit or to the common interest community or on termination of the common interest community;

(13) The recording data for recorded easements and licenses appurtenant to or included in the common interest community or to which any portion of the common interest community is or may become subject by virtue of a reservation in the declaration; and

(14) All matters required by sections 2-106, 2-107, 2-108, 2-109, 2-115, 2-116 and 3-103(d).

(b) The declaration may contain any other matters the declarant considers appropriate.
§36B-2-106. Leasehold common interest communities.

(a) Any lease, the expiration or termination of which may terminate the common interest community or reduce its size, must be recorded. Every lessor of those leases in a condominium or planned community shall sign the declaration. The declaration must state:

1. The recording data for the lease;
2. The date on which the lease is scheduled to expire;
3. A legally sufficient description of the real estate subject to the lease;
4. Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or a statement that they do not have those rights;
5. Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease or a statement that they do not have those rights; and
6. Any rights of the unit owners to renew the lease and the conditions of any renewal or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated in accordance with section 1-107(a) as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

(a) The declaration must allocate to each unit:
   (i) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, (section 3-115(a)) and a portion of the votes in the association;
   (ii) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association (section 3-115(a)) and a portion of the votes in the association; and
   (iii) In a planned community, a fraction or percentage of the common expenses of the association (section 3-115(a)) and a portion of the votes in the association.

(b) The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(c) If units may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common interest community after the addition or withdrawal.

(d) The declaration may provide: (i) That different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter nor may units constitute a class because they are owned by a declarant.

(e) Except for minor variations due to rounding, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units must each equal one if stated as a fraction or one hundred percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(f) In a condominium, the common elements are not subject to partition and any purported conveyance,
encumbrance, judicial sale or other voluntary or
involuntary transfer of an undivided interest in the
common elements made without the unit to which that
interest is allocated is void.

(g) In a cooperative, any purported conveyance,
encumbrance, judicial sale or other voluntary or
involuntary transfer of an ownership interest in the
association made without the possessory interest in the unit
to which that interest is related is void.

§36B-2-108. Limited common elements.

(a) Except for the limited common elements described
in section 2-102(2) and (4), the declaration must specify to
which unit or units each limited common element is
allocated. An allocation may not be altered without the
consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provides, a
limited common element may be reallocated by an
amendment to the declaration executed by the unit owners
between or among whose units the reallocation is made. The
persons executing the amendment shall provide a copy
thereof to the association, which shall record it. The
amendment must be recorded in the names of the parties
and the common interest community.

(c) A common element not previously allocated as a
limited common element may be so allocated only pursuant
to provisions in the declaration made in accordance with
section 2-105(a)(7). The allocations must be made by
amendments to the declaration.

§36B-2-109. Plats and plans.

(a) Plats and plans are a part of the declaration and are
required for all common interest communities except
cooperatives. Separate plats and plans are not required by
this chapter if all the information required by this section is
contained in either a plat or plan. Each plat and plan must
be clear and legible and contain a certification that the plat
or plan contains all information required by this section.

(b) Each plat must show:

(1) The name and a survey or general schematic map of
the entire common interest community;

(2) The location and dimensions of all real estate not
subject to development rights or subject only to the
development right to withdraw and the location and
dimensions of all existing improvements within that real
estate;
(3) A legally sufficient description of any real estate
subject to development rights, labeled to identify the rights
applicable to each parcel;
(4) The extent of any encroachments by or upon any
portion of the common interest community;
(5) To the extent feasible, a legally sufficient
description of all easements serving or burdening any
portion of the common interest community;
(6) The location and dimensions of any vertical unit
boundaries not shown or projected on plans recorded
pursuant to subsection (d) and that unit's identifying
number;
(7) The location with reference to an established datum
of any horizontal unit boundaries not shown or projected on
plans recorded pursuant to subsection (d) and that unit's
identifying number;
(8) A legally sufficient description of any real estate in
which the unit owners will own only an estate for years,
labeled as "leasehold real estate";
(9) The distance between noncontiguous parcels of real
estate comprising the common interest community;
(10) The location and dimensions of limited common
elements, including porches, balconies and patios, other
than parking spaces and the other limited common
elements described in sections 2-102(2) and (4); and
(11) In the case of real estate not subject to development
rights, all other matters customarily shown on land surveys.
(c) A plat may also show the intended location and
dimensions of any contemplated improvement to be
constructed anywhere within the common interest
community. Any contemplated improvement shown must
be labeled either "MUST BE BUILT" or "NEED NOT BE
BUILT".
(d) To the extent not shown or projected on the plats,
plans of the units must show or project:
(1) The location and dimensions of the vertical
boundaries of each unit and that unit's identifying number;
(2) Any horizontal unit boundaries, with reference to an
established datum and that unit's identifying number; and
§36B-2-110. Exercise of development rights.

(a) To exercise any development right reserved under section 2-105(a)(8), the declarant shall prepare, execute and record an amendment to the declaration (section 2-117) and in a condominium or planned community comply with section 2-109. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 2-108 (Limited common elements).

(b) Development rights may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by section 2-105 or 2-106, as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by section 2-109. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 2-105(a)(8).
(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements or both:

(1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain (section 1-107); and

(2) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides, pursuant to section 2-105(a)(8), that all or a portion of the real estate is subject to a right of withdrawal:

(1) If all the real estate is subject to withdrawal and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) If any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

§36B-2-111. Alterations of units.

Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common interest community;

(2) May not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the common interest community, without permission of the association; and

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical
systems or lessen the support of any portion of the common interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

§36B-2-112. Relocation of boundaries between adjoining units.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within thirty days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those unit owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the association.

(b) The association (i) in a condominium or planned community shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers, and (ii) in a cooperative shall prepare and record amendments to the declaration, including any plans, necessary to show or describe the altered boundaries between adjoining units and their dimensions and identifying numbers.

§36B-2-113. Subdivision of units.

(a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, including in a condominium or planned community the plats and plans, subdividing that unit.

(b) The amendment to the declaration must be executed
by the owner of the unit to be subdivided, assign an
identifying number to each unit created and reallocate the
allocated interests formerly allocated to the subdivided
unit to the new units in any reasonable manner prescribed
by the owner of the subdivided unit.

§36B-2-114. Monuments as boundaries.

The existing physical boundaries of a unit or the physical
boundaries of a unit reconstructed in substantial
accordance with the description contained in the original
declaration are its legal boundaries, rather than the
boundaries derived from the description contained in the
original declaration, regardless of vertical or lateral
movement of the building or minor variance between those
boundaries and the boundaries derived from the
description contained in the original declaration. This
section does not relieve a unit owner of liability in case of
his willful misconduct or relieve a declarant or any other
person of liability for failure to adhere to any plats and
plans or, in a cooperative, to any representation in the
public offering statement.

§36B-2-115. Use for sales purposes.

A declarant may maintain sales offices, management
offices and models in units or on common elements in the
common interest community only if the declaration so
provides and specifies the rights of a declarant with regard
to the number, size, location and relocation thereof. In a
cooperative or condominium, any sales office, management
office or model not designated a unit by the declaration is a
common element. If a declarant ceases to be a unit owner, he
ceases to have any rights with regard thereto unless it is
removed promptly from the common interest community in
accordance with a right to remove reserved in the
declaration. Subject to any limitations in the declaration, a
declarant may maintain signs on the common elements
advertising the common interest community. This section is
subject to the provisions of other state law and to local
ordinances.


(a) Subject to the provisions of the declaration, a
declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging the declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

(b) In a planned community, subject to the provisions of sections 3-102(a)(6) and 3-112, the unit owners have an easement (i) in the common elements for purposes of access to their units and (ii) to use the common elements and all real estate that must become common elements (section 2-105(a)(6)) for all other purposes.

§36B-2-117. Amendment of declaration.

(a) Except in cases of amendments that may be executed by a declarant under section 2-109(f) or 2-110, or by the association under section 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113, or by certain unit owners under section 2-108(b), 2-112(a), 2-113(b), or 2-118(b), and except as limited by subsection (d), the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to section 2-112(a), must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is
restricted, in the absence of unanimous consent of the unit
owners.
(e) Amendments to the declaration required by this
chapter to be recorded by the association must be prepared,
executed, recorded, and certified on behalf of the
association by any officer of the association designated for
that purpose or, in the absence of designation, by the
president of the association.
§36B-2-118. Termination of common interest community.
(a) Except in the case of a taking of all the units by
eminent domain (section 1-107) or in the case of foreclosure
against an entire cooperative of a security interest that has
priority over the declaration, a common interest community
may be terminated only by agreement of unit owners of
units to which at least eighty percent of the votes in the
association are allocated, or any larger percentage the
declaration specifies. The declaration may specify a smaller
percentage only if all of the units are restricted exclusively
to nonresidential uses.
(b) An agreement to terminate must be evidenced by the
execution of a termination agreement, or ratifications
thereof, in the same manner as a deed, by the requisite
number of unit owners. The termination agreement must
specify a date after which the agreement will be void unless
it is recorded before that date. A termination agreement and
all ratifications thereof must be recorded in every county in
which a portion of the common interest community is
situated and is effective only upon recordation.
(c) In the case of a condominium or planned community
containing only units having horizontal boundaries
described in the declaration, a termination agreement may
provide that all of the common elements and units of the
common interest community must be sold following
termination. If, pursuant to the agreement, any real estate
in the common interest community is to be sold following
termination, the termination agreement must set forth the
minimum terms of the sale.
(d) In the case of a condominium or planned community
containing any units not having horizontal boundaries
described in the declaration, a termination agreement may
provide for sale of the common elements, but it may not
require that the units be sold following termination, unless
the declaration as originally recorded provided otherwise
or all the unit owners consent to the sale.

e) The association, on behalf of the unit owners, may
contract for the sale of real estate in a common interest
community, but the contract is not binding on the unit
owners until approved pursuant to subsections (a) and (b).
If any real estate is to be sold following termination, title to
that real estate, upon termination, vests in the association
as trustee for the holders of all interests in the units.
Thereafter, the association has all powers necessary and
appropriate to effect the sale. Until the sale has been
concluded and the proceeds thereof distributed, the
association continues in existence with all powers it had
before termination. Proceeds of the sale must be distributed
to unit owners and lien holders as their interests may
appear, in accordance with subsections (h), (i) and (j).

Unless otherwise specified in the termination agreement, as
long as the association holds title to the real estate, each
unit owner and the unit owner's successors in interest have
an exclusive right to occupancy of the portion of the real
estate that formerly constituted the unit. During the period
of that occupancy, each unit owner and the unit owner's
successors in interest remain liable for all assessments and
other obligations imposed on unit owners by this chapter or
the declaration.

f) In a condominium or planned community, if the real
estate constituting the common interest community is not to
be sold following termination, title to the common elements
and, in a common interest community containing only units
having horizontal boundaries described in the declaration,
title to all the real estate in the common interest community,
vests in the unit owners upon termination as tenants in
common in proportion to their respective interests as
provided in subsection (j), and liens on the units shift
accordingly. While the tenancy in common exists, each unit
owner and the unit owner's successors in interest have an
exclusive right to occupancy of the portion of the real estate
that formerly constituted the unit.

g) Following termination of the common interest
community, the proceeds of any sale of real estate, together
with the assets of the association, are held by the
association as trustee for unit owners and holders of liens on
the units as their interests may appear.

(h) Following termination of a condominium or planned
community, creditors of the association holding liens on the
units, which were recorded before termination, may enforce
those liens in the same manner as any lien holder. All other
creditors of the association are to be treated as if they had
perfected liens on the units immediately before
termination.

(i) In a cooperative, the declaration may provide that all
creditors of the association have priority over any interests
of unit owners and creditors of unit owners. In that event,
following termination, creditors of the association holding
liens on the cooperative which were recorded before
termination may enforce their liens in the same manner as
any lien holder, and any other creditor of the association is
to be treated as if he had perfected a lien against the
cooperative immediately before termination. Unless the
declaration provides that all creditors of the association
have that priority:

(1) The lien of each creditor of the association which
was perfected against the association before termination
becomes, upon termination, a lien against each unit owner’s
interest in the unit as of the date the lien was perfected;

(2) Any other creditor of the association is to be treated
upon termination as if the creditor had perfected a lien
against each unit owner’s interest immediately before
termination;

(3) The amount of the lien of an association’s creditor
described in paragraphs (1) and (2) against each of the unit
owners’ interest must be proportionate to the ratio which
each unit’s common expense liability bears to the common
expense liability of all of the units;

(4) The lien of each creditor of each unit owner which
was perfected before termination continues as a lien against
that unit owner’s unit as of the date the lien was perfected;

(5) The assets of the association must be distributed to
all unit owners and all lien holders as their interests may
appear in the order described above. Creditors of the
association are not entitled to payment from any unit owner
in excess of the amount of the creditor’s lien against that
unit owner's interest.

(j) The respective interests of unit owners referred to in subsections (e), (f), (g), (h), and (i) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are: (i) In a condominium, their respective common element interests immediately before the termination; (ii) in a cooperative, their respective ownership interests immediately before the termination; and (iii) in a planned community, their respective common expense liabilities immediately before the termination.

(k) In a condominium or planned community, except as provided in subsection (1), foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

(l) In a condominium or planned community, if a lien or
encumbrance against a portion of the real estate comprising
the common interest community has priority over the
declaration and the lien or encumbrance has not been
partially released, the parties foreclosing the lien or
encumbrance, upon foreclosure, may record an instrument
excluding the real estate subject to that lien or
encumbrance from the common interest community.

§36B-2-119. Rights of secured lenders.

The declaration may require that all or a specified
number or percentage of the lenders who hold security
interests encumbering the units approve specified actions
of the unit owners or the association as a condition to the
effectiveness of those actions, but no requirement for
approval may operate to (i) deny or delegate control over the
general administrative affairs of the association by the unit
owners or the executive board, or (ii) prevent the
association or the executive board from commencing,
intervening in, or settling any litigation or proceeding, or
(iii) prevent any insurance trustee or the association from
receiving and distributing any insurance proceeds except
pursuant to section 3-113.

§36B-2-120. Master associations.

(a) If the declaration provides that any of the powers
described in section 3-102 are to be exercised by or may be
delegated to a profit or nonprofit corporation or to an
unincorporated association that exercises those or other
powers on behalf of one or more common interest
communities or for the benefit of the unit owners of one or
more common interest communities, all provisions of this
chapter applicable to unit owners' associations apply to any
such corporation or unincorporated association except as
modified by this section.

(b) Unless it is acting in the capacity of an association
described in section 3-101, a master association may
exercise the powers set forth in section 3-102(a)(2) only to
the extent expressly permitted in the declarations of
common interest communities which are part of the master
association or expressly described in the delegations of
power from those common interest communities to the
master association.
19 (c) If the declaration of any common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.
20 (d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 3-103, 3-108, 3-109, 3-110 and 3-112 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.
21 (e) Even if a master association is also an association described in section 3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each common interest community the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:
22 (1) All unit owners of all common interest communities subject to the master association may elect all members of the master association's executive board.
23 (2) All members of the executive boards of all common interest communities subject to the master association may elect all members of the master association's executive board.
24 (3) All unit owners of each common interest community subject to the master association may elect specified members of the master association's executive board.
25 (4) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board.

§36B-2-121. Merger or consolidation of common interest communities.
26 (a) Any two or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (b), may be merged or consolidated into a single common interest community. In
the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the preexisting common interest communities, and the operations and activities of all associations of the preexisting common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets and liabilities of all preexisting associations.

(b) An agreement of two or more common interest communities to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new common interest community which are allocated to all of the units comprising each of the preexisting common interest communities, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting common interest community must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting common interest community.

§36B-2-122. Addition of unspecified real estate.

In a planned community, if the right is originally reserved in the declaration, the declarant in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the planned community without describing the location of that real estate in the
original declaration; but, the amount of real estate added to
the planned community pursuant to this section may not
exceed ten percent of the real estate described in section
2-105(a)(3) and the declarant may not in any event increase
the number of units in the planned community beyond the
number stated in the original declaration pursuant to
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.

A unit owners' association must be organized no later
than the date the first unit in the common interest
community is conveyed. The membership of the association
at all times consists exclusively of all unit owners or,
following termination of the common interest community,
of all former unit owners entitled to distributions of
proceeds under section 2-118 or their heirs, successors, or
assigns. The association must be organized as a profit or
nonprofit corporation, trust, partnership, or as an
unincorporated association.

§36B-3-102. Powers of unit owners' association.

(a) Except as provided in subsection (b), and subject to
the provisions of the declaration, the association, even if
unincorporated, may:
(1) Adopt and amend bylaws and rules and regulations;
(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
(3) Hire and discharge managing agents and other employees, agents, and independent contractors;
(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;
(5) Make contracts and incur liabilities;
(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
(7) Cause additional improvements to be made as a part of the common elements;
(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but (i) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section 3-112 and (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section 3-112;
(9) Grant easements, leases, licenses, and concessions through or over the common elements;
(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in sections 2-102(2) and (4), and for services provided to unit owners;
(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association;
(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 4-109, or statements of unpaid assessments;
(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;
(14) Assign its right to future income, including the right to receive common expense assessments, but only to
the extent the declaration expressly so provides;
(15) Exercise any other powers conferred by the
declaration or bylaws;
(16) Exercise all other powers that may be exercised in
this state by legal entities of the same type as the
association; and
(17) Exercise any other powers necessary and proper for
the governance and operation of the association.

(b) The declaration may not impose limitations on the
power of the association to deal with the declarant which
are more restrictive than the limitations imposed on the
power of the association to deal with other persons.

§36B-3-103. Executive board members and officers.

(a) Except as provided in the declaration, the bylaws,
subsection (b), or other provisions of this chapter, the
executive board may act in all instances on behalf of the
association. In the performance of their duties, the officers
and members of the executive board are required to
exercise (i) if appointed by the declarant, the care required
of fiduciaries of the unit owners and (ii) if elected by the unit
owners, ordinary and reasonable care.

(b) The executive board may not act on behalf of the
association to amend the declaration (section 2-117), to
terminate the common interest community (section 2-118)
or to elect members of the executive board or determine the
qualifications, powers and duties, or terms of office of
executive board members (section 3-103(f)), but the
executive board may fill vacancies in its membership for the
unexpired portion of any term.

(c) Within thirty days after adoption of any proposed
budget for the common interest community, the executive
board shall provide a summary of the budget to all the unit
owners, and shall set a date for a meeting of the unit owners
to consider ratification of the budget not less than fourteen
nor more than thirty days after mailing of the summary.
Unless at that meeting a majority of all unit owners or any
larger vote specified in the declaration reject the budget,
the budget is ratified, whether or not a quorum is present. In
the event the proposed budget is rejected, the periodic
budget last ratified by the unit owners must be continued
until such time as the unit owners ratify a subsequent
budget proposed by the executive board.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Not later than sixty days after conveyance of twenty-five percent of the units that may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units that may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the executive board must be elected by unit owners other than the declarant.

(f) Except as otherwise provided in section 2-120(e), not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or
§36B-3-104. Transfer of special declarant rights.

(a) A special declarant right (section 1-103(29)) created or reserved under this chapter may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common interest community is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transfer or declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant (section 1-103(1)), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the common interest community.

(3) If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all
the property being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that property held by that declarant, or only to any rights reserved in the declaration pursuant to section 2-115 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of all interests in a common interest community owned by a declarant:

(1) The declarant ceases to have any special declarant rights, and
(2) The period of declarant control (section 3-103(d)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4) of a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relates to the successor's exercise or nonexercise of special declarant rights; or
(ii) On his transferor, other than:

(A) Misrepresentation by any previous declarant;
(B) Warranty obligations on improvements made by any previous declarant, or made before the common interest community was created;
(C) Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or
(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions 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 tranferor 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
association at any time after the executive board elected by the unit owners pursuant to section 3-103(f) takes office upon not less than ninety days' notice to the other party. This section does not apply to: (i) Any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section, or (ii) a proprietary lease.

§36B-3-106. Bylaws.

(a) The bylaws of the association must provide:
(1) The number of members of the executive board and the titles of the officers of the association;
(2) Election by the executive board of president, treasurer, secretary, and any other officers of the association specified by the bylaws;
(3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;
(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
(5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and
(6) A method for amending the bylaws.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

§36B-3-107. Upkeep of common interest community.

(a) Except to the extent provided by the declaration, subsection (b), or section 3-113(h), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit power responsible for the
damage, or the association if it is responsible, is liable for
the prompt repair thereof.

(b) In addition to the liability that a declarant as a unit
owner has under this chapter, the declarant alone is liable
for all expenses in connection with real estate subject to the
development rights. No other unit owner and no other
portion of the common interest community is subject to a
claim for payment of those expenses. Unless the declaration
provides otherwise, any income or proceeds from real estate
subject to development rights inures to the declarant.

(c) In a planned community, if all development rights
have expired with respect to any real estate, the declarant
remains liable for all expenses of that real estate unless,
upon expiration, the declaration provides that the real
estate becomes common elements or units.

§36B-3-108. Meetings.

A meeting of the association must be held at least once
each year. Special meetings of the association may be called
by the president, a majority of the executive board, or by
unit owners having twenty percent, or any lower percentage
specified in the bylaws, of the votes in the association. Not
less than ten nor more than sixty days in advance of any
meeting, the secretary or other officer specified in the
bylaws shall cause notice to be hand delivered or sent
prepaid by United States mail to the mailing address of
each unit or to any other mailing address designated in
writing by the unit owner. The notice of any meeting must
state the time and place of the meeting and the items on the
agenda, including the general nature of any proposed
amendment to the declaration or bylaws, any budget
changes, and any proposal to remove an officer or member
of the executive board.

§36B-3-109. Quorums.

(a) Unless the bylaws provide otherwise, a quorum is
present throughout any meeting of the association if
persons entitled to cast twenty percent of the votes that may
be cast for election of the executive board are present in
person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a
quorum is deemed present throughout any meeting of the
§36B-3-110. Voting; proxies.

(a) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units: (i) The provisions of subsections (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting these matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in section 3-108, of all meetings at which lessees are entitled to vote.

(d) No votes allocated to a unit owned by the association may be cast.

§36B-3-111. Tort and contract liability.

Neither the association nor any unit owner except the
declarant is liable for that declarant's torts in connection with any part of the common interest community which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for (i) all tort losses not covered by insurance suffered by the association or that unit owner, and (ii) all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 3-117 (Other Liens).

§36B-3-112. Conveyance or encumbrance of common elements.

(a) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent of the votes in the association, including eighty percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(b) Part of a cooperative may be conveyed and all or part
of a cooperative may be subjected to a security interest by
the association if persons entitled to cast at least eighty
percent of the votes in the association, including eighty
percent of the votes allocated to units not owned by a
declarant, or any larger percentage the declaration
specified, agree to that action; but, if fewer than all of the
units or limited common elements are to be conveyed or
subjected to a security interest, then all unit owners of those
units, or the units to which those limited common elements
are allocated, must agree in order to convey those units or
limited common elements or subject them to a security
interest. The declaration may specify a smaller percentage
only if all of the units are restricted exclusively to
nonresidential uses. Proceeds of the sale are an asset of the
association. Any purported conveyance or other voluntary
transfer of an entire cooperative, unless made pursuant to
section 2-118, is void.

(c) An agreement to convey common elements in a
condominium or planned community, or to subject them to
a security interest, or in a cooperative, an agreement to
convey any part of a cooperative or subject it to a security
interest, must be evidenced by the execution of an
agreement, or ratifications thereof, in the same manner as a
deed, by the requisite number of unit owners. The
agreement must specify a date after which the agreement
will be void unless recorded before that date. The
agreement and all ratifications thereof must be recorded in
every county in which a portion of the common interest
community is situated, and is effective only upon
recordation.

(d) The association, on behalf of the unit owners, may
contract to convey an interest in a common interest
community pursuant to subsection (a), but the contract is
not enforceable against the association until approved
pursuant to subsections (a), (b) and (c). Thereafter, the
association has all powers necessary and appropriate to
effect the conveyance or encumbrance, including the power
to execute deeds or other instruments.

(e) Unless made pursuant to this section, any purported
conveyance, encumbrance, judicial sale, or other voluntary
transfer of common elements or of any other part of a
cooperative is void.
A conveyance or encumbrance of common elements or of a cooperative pursuant to this section does not deprive any unit of its rights of access and support.

Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

§36B-3-113. Insurance.

Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

1. Property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles must be not less than eighty percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

2. Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units.

In the case of a building that is part of a cooperative or that contains units having horizontal boundaries described in the declaration, the insurance maintained under subsection (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.

If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly shall
cause notice of that fact to be hand delivered or sent prepaid
by United States mail to all unit owners. The declaration
may require the association to carry any other insurance,
and the association in any event may carry any other
insurance it considers appropriate to protect the
association or the unit owners.

(d) Insurance policies carried pursuant to subsections
(a) and (b) must provide that:

(1) Each unit owner is an insured person under the
policy with respect to liability arising out of his interest in
the common elements or membership in the association;

(2) The insurer waives its right to subrogation under the
policy against any unit owner or member of his household;

(3) No act or omission by any unit owner, unless acting
within the scope of his authority on behalf of the
association, will void the policy or be a condition to
recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other
insurance in the name of a unit owner covering the same
risk covered by the policy, the association's policy provides
primary insurance.

(e) Any loss covered by the property policy under
subsections (a)(1) and (b) must be adjusted with the
association, but the insurance proceeds for that loss are
payable to any insurance trustee designated for that
purpose, or otherwise to the association, and not to any
holder of a security interest. The insurance trustee or the
association shall hold any insurance proceeds in trust for
the association, unit owners, and lien holders as their
interests may appear. Subject to the provisions of
subsection (h), the proceeds must be disbursed first for the
repair or restoration of the damaged property, and the
association, unit owners, and lien holders are not entitled to
receive payment of any portion of the proceeds unless there
is a surplus of proceeds after the property has been
completely repaired or restored, or the common interest
community is terminated.

(f) An insurance policy issued to the association does
not prevent a unit owner from obtaining insurance for his
own benefit.

(g) An insurer that has issued an insurance policy under
this section shall issue certificates or memoranda of
insurance to the association and, upon written request, to any unit owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(h) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless (i) the common interest community is terminated, in which case section 2-118 applies (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (iii) eighty percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and (ii) except to the extent that other persons will be distributees (section 2-105(a)12(ii)), (A) the insurance proceeds attributable to units limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and (B) the remainder of the proceeds must be distributed to all the unit owners or lien holders, as their interests may appear, as follows: (1) In a condominium, in proportion to the common element interests of all the units and (2) in a cooperative or planned community, in proportion to the common expense liabilities of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.
(i) The provisions of this section may be varied or waived in the case of a common interest community all of whose units are restricted to nonresidential use.

§36B-3-114. Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

§36B-3-115. Assessments for common expenses.

(a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

(b) Except for assessments under subsections (c), (d) and (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 2-107(a) and (b). Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent per year.

(c) To the extent required by the declaration:

(1) Any common expense associated with the maintenance, repair or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(2) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(3) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association (section 3-117(a)) may be made only against the units in the common interest community at the time the judgment was entered, in proportion to their common expense liabilities.
(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit.

(f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due must be recalculated in accordance with the reallocated common expense liabilities.

§36B-3-116. Lien for assessments.

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 3-102(a)(10), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner’s interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics’ or materialmen’s liens, or the priority of liens for other assessments made by the association. (The lien under this section is not subject to the provisions of (insert appropriate reference to state homestead, dower and curtesy, or other exemptions).)
(c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(e) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this section must include costs and reasonable attorney’s fees for the prevailing party.

(g) The association upon written request shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the unit owner’s interest is real estate, the statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(h) For the purpose of perfecting and preserving its lien, the association shall give notice to the unit owner in the manner set forth in section one (§56-2-1), article two, chapter fifty-six of this code, or by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the association shall cause to be recorded a notice of the lien in the office of the clerk of the county commission of any county wherein any part of the condominium is located. The notice shall contain:

(1) A legally sufficient description of the unit;

(2) The name or names of the owners of the unit;

(3) The amount of unpaid assessments due together with the date when each fell due; and

(4) The date of recordation.

The clerk of the county commission in whose office the notice is recorded shall index the notice in the appropriate deed books and lien books in the name of the unit owners and of the association. The cost of recordation shall be assessed against any unit owner found to be delinquent in a subsequent proceeding to enforce the lien.
Upon payment of the assessment, the association shall execute a written release of the lien in the manner set forth in section one (§38-12-1), article twelve, chapter thirty-eight of this code. This release shall be recorded, at the expense of the association, in the office of the clerk of the county commission wherein the notice of the lien was filed.

(i) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.

§36B-3-117. Other liens.

(a) In a condominium or planned community:

(1) Except as provided in paragraph (2), a judgment for money against the association (if recorded) is not a lien on the common elements, but is a lien in favor of the judgment lien holder against all of the units in the common interest community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 3-112, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the common interest community, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the common interest community, becomes effective against two or more units, the unit owner of an affected unit may pay to the lien holder the amount of the lien attributable to his unit and the lien holder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be
proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association must be indexed in the name of the common interest community and the association and, when so indexed, is notice of the lien against the units.

(b) In a cooperative:

(1) If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association shall promptly transmit a copy of that notice to each unit owner of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

(2) Whether or not a unit owner's unit is subject to the claims of the association's creditors, no other property of a unit owner is subject to those claims.

§36B-3-118. Association records.

1 The association shall keep financial records sufficiently detailed to enable the association to comply with section 4-109. All financial and other records must be made reasonably available for examination by any unit owner and his authorized agents.

§36B-3-119. Association as trustee.

1 With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the 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.

(a) This article applies to all units subject to this chapter except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a common interest community in which all units are restricted to nonresidential use.

(b) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

(1) A gratuitous disposition of a unit;

(2) A disposition pursuant to court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure;

(5) A disposition to a dealer;

(6) A disposition that may be canceled at any time and for any reason by the purchaser without penalty; or

(7) A disposition of a unit in a planned community in which the declaration limits the maximum annual assessment of any unit to not more than three hundred dollars, as adjusted pursuant to section 1-114 (Adjustment of dollar amounts) if:
(i) The declarant has a reasonable and good faith belief that the maximum stated assessment will be sufficient to pay the expenses of the planned community;

(ii) The declaration cannot be amended to increase the assessment during the period of declarant control without the consent of all unit owners; and

(iii) The planned community is not subject to any development rights.

§36B-4-102. Liability for public offering statement requirements.

(a) Except as provided in subsection (b), a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of sections 4-103, 4-104, 4-105 and 4-106.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant (section 3-104) or to a dealer who intends to offer units in the common interest community. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).

(c) Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in subsection 4-108(a). The person who prepared all or a part of the public offering statement is liable under sections 4-108 and 4-117 for any false or misleading statement set forth therein or for any omission of a material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(d) If a unit is part of a common interest community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement conforming to the requirements of sections 4-103, 4-104, 4-105 and 4-106 as those requirements relate
§36B-4-103. Public offering statement; general provisions.

(a) Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

1. The name and principal address of the declarant and of the common interest community and a statement that the common interest community is either a condominium, cooperative or planned community;

2. A general description of the common interest community, including to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings and amenities that the declarant anticipates including in the common interest community;

3. The number of units in the common interest community;

4. Copies and a brief narrative description of the significant features of the declaration, other than any plats and plans and any other recorded covenants, conditions, restrictions and reservations affecting the common interest community; the bylaws and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under section 3-105;

5. Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser and thereafter the current budget of the association, a statement of who prepared the budget and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

   (i) A statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement;

   (ii) A statement of any other reserves;
(iii) The projected common expense assessment by category of expenditures for the association; and
(iv) The projected monthly common expense assessment for each type of unit;
(6) Any services not reflected in the budget that the declarant provides, or expenses that he pays and which he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;
(7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;
(8) A description of any liens, defects, or encumbrances on or affecting the title to the common interest community;
(9) A description of any financing offered or arranged by the declarant;
(10) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;
(11) A statement that:
(i) Within fifteen days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant;
(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent of the sales price of the unit plus ten percent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community; and
(iii) If a purchaser receives the public offering statement more than fifteen days before signing a contract, he cannot cancel the contract;
(12) A statement of any unsatisfied judgments or pending suits against the association and the status of any pending suits material to the common interest community, of which a declarant has actual knowledge;
(13) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account
until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 4-108, together with the name and address of the escrow agent;

(14) Any restraints on alienation of any portion of the common interest community and any restrictions: (i) On use, occupancy, and alienation of the units; and (ii) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation or casualty loss to the unit or to the common interest community or on termination of the common interest community;

(15) A description of the insurance coverage provided for the benefit of unit owners;

(16) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the common interest community;

(17) The extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to section 4-119 (Declarant's obligation to complete and restore);

(18) A brief narrative description of any zoning and other land use requirements affecting the common interest community;

(19) All unusual and material circumstances, features and characteristics of the common interest community and the units; and

(20) In a cooperative, (i) whether the unit owners will be entitled, for federal, state and local income tax purposes, to a pass through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative; and (ii) a statement as to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

(b) If a common interest community composed of not more than twelve units is not subject to any development rights and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities, or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs (9), (10), (15), (16), (17),
(18) and (19) of subsection (a) and the narrative descriptions of documents required by subsection (a)(4).

(c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

§36B-4-104. Same—Common interest communities subject to development rights.

If the declaration provides that a common interest community is subject to any development rights, the public offering statement must disclose, in addition to the information required by section 4-103:

(1) The maximum number of units and the maximum number of units per acre, that may be created;

(2) A statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use or a statement that no representations are made regarding use restrictions;

(3) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;

(4) A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

(5) A statement of the maximum extent to which each unit’s allocated interests may be changed by the exercise of any development right described in paragraph (3);

(6) A statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the common interest community will be compatible with existing buildings and improvements in the common interest community in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

(7) General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the common interest community.
pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(8) A statement of any limitations as to the locations of any building or other improvement that may be made within any part of the common interest community pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(9) A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the common interest community, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

(10) A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the common interest community, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

(11) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and

(12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

§36B-4-105. Same—Time shares.

If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public offering statement shall disclose, in addition to the information required by section 4-103:

(1) The number and identity of units in which time shares may be created;

(2) The total number of time shares that may be created;
(3) The minimum duration of any time shares that may be created; and
(4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in section 3-116.

§36B-4-106. Same—Common interest communities containing conversion buildings.

(a) The public offering statement of a common interest community containing any conversion building must contain, in addition to the information required by section 4-103:
(1) A statement by the declarant, based on a report prepared by an independent (registered) architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;
(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard; and
(3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.
(b) This section applies only to buildings containing units that may be occupied for residential use.

§36B-4-107. Same—Common interest community securities.

If an interest in a common interest community is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if he delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission.

§36B-4-108. Purchaser's right to cancel.

(a) A person required to deliver a public offering statement pursuant to section 4-102(c) shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than
fifteen days before execution of a contract for the purchase
of a unit, the purchaser, before conveyance, may cancel the
contract within fifteen days after first receiving the public
offering statement.

(b) If a purchaser elects to cancel a contract pursuant to
subsection (a), he may do so by hand delivering notice
thereof to the offeror or by mailing notice thereof by
prepaid United States mail to the offeror or to his agent for
service of process. Cancellation is without penalty, and all
payments made by the purchaser before cancellation must
be refunded promptly.

(c) If a person required to deliver a public offering
statement pursuant to section 4-102(c) fails to provide a
purchaser to whom a unit is conveyed with that public
offering statement and all amendments thereto as required
by subsection (a), the purchaser, in addition to any rights to
damages or other relief, is entitled to receive from that
person an amount equal to ten percent of the sale price of
the unit, plus ten percent of the share, proportionate to his
common expense liability, of any indebtedness of the
association secured by security interests encumbering the
common interest community.

§36B-4-109. Resales of units.

(a) Except in the case of a sale in which delivery of a
public offering statement is required, or unless exempt
under section 4-101(b), a unit owner shall furnish to a
purchaser before execution of any contract for sale of a unit,
or otherwise before conveyance, a copy of the declaration
(other than any plats and plans), the bylaws, the rules or
regulations of the association, and a certificate containing:

(1) A statement disclosing the effect on the proposed
disposition of any right of first refusal or other restraint on
the free alienability of the unit;

(2) A statement setting forth the amount of the monthly
common expense assessment and any unpaid common
expense or special assessment currently due and payable
from the selling unit owner;

(3) A statement of any other fees payable by unit
owners;

(4) A statement of any capital expenditures anticipated
by the association for the current and two next succeeding
(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(7) The current operating budget of the association;

(8) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

(9) A statement describing any insurance coverage provided for the benefit of unit owners;

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration;

(11) A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the common interest community;

(12) A statement of the remaining term of any leasehold estate affecting the common interest community and the provisions governing any extension or renewal thereof;

(13) A statement of any restrictions in the declaration affecting the amount that may be received by a unit owner upon sale, condemnation, casualty loss to the unit or the common interest community, or termination of the common interest community; and

(14) In a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the unit owner of real estate taxes and interest paid by the association.

(b) The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for any unpaid assessment
Or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

§36B-4-110. Escrow of deposits.

1 Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to section 4-102(c) must be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by an institution whose accounts are insured by a governmental agency or instrumentality until (i) delivered to the declarant at closing; (ii) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser.

§36B-4-111. Release of liens.

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to section 4-102(c), a seller:

1 Before conveying a unit, shall record or furnish to the purchaser releases of all liens, except liens on real estate that a declarant has the right to withdraw from the common interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

(i) In a condominium, that unit and its common element interest; and

(ii) In a cooperative or planned community, that unit and any limited common elements assigned thereto, or

2 Shall provide a surety bond or substitute collateral for or insurance against the lien.

(b) Before conveying real estate to the association, the declarant shall have that real estate released from: (1) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and (2) all other liens on that real estate unless the public offering statement describes certain real estate that may be
conveyed subject to liens in specified amounts.

§36B-4-112. Conversion buildings.

(a) A declarant of a common interest community containing conversion buildings, and any dealer who intends to offer units in such a common interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than one hundred twenty days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(b) For sixty days after delivery or mailing of the notice described in subsection (a), the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty day period, the offeror may not offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(c) If a seller, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, the recordation of the deed conveying the unit or, in a cooperative, the conveyance of the unit, extinguishes any right a tenant may have under subsection (b) to
purchase that unit if the deed states that the seller has
complied with subsection (b), but the conveyances does not
affect the right of a tenant to recover damages from the
seller for a violation of subsection (b).
(d) Nothing in this section permits termination of a
lease by a declarant in violation of its terms.

§36B-4-113. Express warranties of quality.
(a) Express warranties made by any seller to a
purchaser of a unit, if relied upon by the purchaser, are
created as follows:
(1) Any affirmation of fact or promise which relates to
the unit, its use, or rights appurtenant thereto, area
improvements to the common interest community that
would directly benefit the unit, or the right to use or have
the benefit of facilities not located in the common interest
community, creates an express warranty that the unit and
related rights and uses will conform to the affirmation or
promise;
(2) Any model or description of the physical
characteristics of the common interest community,
including plans and specifications of or for improvements,
creates an express warranty that the common interest
community will conform to the model or description;
(3) Any description of the quantity or extent of the real
estate comprising the common interest community,
including plats or surveys, creates an express warranty that
the common interest community will conform to the
description, subject to customary tolerances; and
(4) A provision that a purchaser may put a unit only to a
specified use is an express warranty that the specified use is
lawful.
(b) Neither formal words, such as “warranty” or
“guarantee,” nor a specific intention to make a warranty,
are necessary to create an express warranty of quality, but a
statement purporting to be merely an opinion or
commendation of the real estate or its value does not create
a warranty.
(c) Any conveyance of a unit transfers to the purchaser
all express warranties of quality made by previous sellers.

§36B-4-114. Implied warranties of quality.
(a) A declarant and any dealer warrants that a unit will
be in at least as good condition at the earlier of the time of
the conveyance or delivery of possession as it was at the
time of contracting, reasonable wear and tear expected.
(b) A declarant and any dealer impliedly warrants that
a unit and the common elements in the common interest
community are suitable for the ordinary uses of real estate
of its type and that any improvements made or contracted
for by him, or made by any person before the creation of the
common interest community, will be:
(1) Free from defective materials; and
(2) Constructed in accordance with applicable law,
according to sound engineering and construction
standards, and in a workmanlike manner.
(c) In addition, a declarant and any dealer warrants to a
purchaser of a unit that may be used for residential use that
an existing use, continuation of which is contemplated by
the parties, does not violate applicable law at the earlier of
the time of conveyance or delivery of possession.
(d) Warranties imposed by this section may be excluded
or modified as specified in section 4-115.
(e) For purposes of this section, improvements made or
contracted for by an affiliate of a declarant, section
1-103(1), are made or contracted for by the declarant.
(f) Any conveyance of a unit transfers to the purchaser
all of the declarant’s implied warranties of quality.
§36B-4-115. Exclusion or modification of implied warranties
of quality.
(a) Except as limited by subsection (b) with respect to a
purchaser of a unit that may be used for residential use,
implied warranties of quality:
(1) May be excluded or modified by agreement of the
parties; and
(2) Are excluded by expression of disclaimer, such as
"as is," "with all faults" or other language that in common
understanding calls the purchaser’s attention to the
exclusion of warranties.
(b) With respect to a purchaser of a unit that may be
occupied for residential use, no general disclaimer of
implied warranties of quality is effective, but a declarant
and any dealer may disclaim liability in an instrument
signed by the purchaser for a specified defect or specified
failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

§36B-4-116. Statute of limitations for warranties.

(a) A judicial proceeding for breach of any obligation arising under section 4-113 or 4-114 must be commenced within six years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(2) As to each common element, at the time the common element is completed or, if later, as to (i) a common element that may be added to the common interest community or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) a common element within any other portion of the common interest community, at the time the first unit is conveyed to a bona fide purchaser.

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the common interest community, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

§36B-4-117. Effect of violations on rights of action; attorney's fees.

If a declarant or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a
§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

§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.

A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

§39-4-2. Durable power of attorney not affected by disability.

All acts done by an attorney in fact pursuant to a
§39-4-3. Relation of attorney in fact to court-appointed fiduciary.

(a) If, following execution of a durable power of attorney, a court or county commission of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney, the conservator, guardian of his estate, or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

§39-4-4. Power of attorney not revoked until notice.

(a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(b) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity
§39-4-5. Proof of continuance of durable and other powers of attorney by affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. Any bona fide purchaser for value who purchases property from an attorney in fact who acts under a power of attorney specifying that the power shall become effective upon the disability, incompetence or incapacity of the principal or similar words is under no duty to ascertain whether the principal was or is, in fact, disabled, incompetent or incapacitated at the time of the contract of sale or the actual transfer of the property, and such right, title and interest as such purchaser may acquire shall not be affected by the principal's ability, competency or capacity or lack thereof. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

§39-4-6. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

§39-4-7. Short title.

This article may be cited as the “Uniform Durable 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-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:
(1) A person who directly or indirectly owns, controls or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) As a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) Solely to secure a debt, if the person has not exercised the power to vote;

(2) A corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) As a fiduciary or agent without sole power to vote the securities; or

(ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(3) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(4) A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(b) "Asset" means property of a debtor, but the term does not include:

(1) Property to the extent it is encumbered by a valid lien;

(2) Property to the extent it is generally exempt under nonbankruptcy law; or

(3) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(c) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.
(d) "Creditor" means a person who has a claim.
(e) "Debt" means liability on a claim.
(f) "Debtor" means a person who is liable on a claim.
(g) "Insider" includes:
   (1) If the debtor is an individual:
      (i) A relative of the debtor or of a general partner of the
debtor;
      (ii) A partnership in which the debtor is a general
partner;
      (iii) A general partner in a partnership described in
paragraph (ii); or
      (iv) A corporation of which the debtor is a director,
officer or person in control;
   (2) If the debtor is a corporation:
      (i) A director of the debtor;
      (ii) An officer of the debtor;
      (iii) A person in control of the debtor;
      (iv) A partnership in which the debtor is a general
partner;
      (v) A general partner in a partnership described in
paragraph (iv); or
   (vi) A relative of a general partner, director, officer or
person in control of the debtor;
   (3) If the debtor is a partnership:
      (i) A general partner in the debtor;
      (ii) A relative of a general partner in, a general partner
of, or a person in control of the debtor;
      (iii) Another partnership in which the debtor is a
general partner;
      (iv) A general partner in a partnership described in
paragraph (iii); or
   (v) A person in control of the debtor;
   (4) An affiliate, or an insider of an affiliate as if the
affiliate were the debtor; and
   (5) A managing agent of the debtor.
(h) "Lien" means a charge against or an interest in
property to secure payment of a debt or performance of an
obligation, and includes a security interest created by
agreement, a judicial lien obtained by legal or equitable
process or proceedings, a common-law lien or a statutory
lien.
(i) "Person" means an individual, partnership,
corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust or any other legal or commercial entity.

(j) "Property" means anything that may be the subject of ownership.

(k) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(l) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance.

(m) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

§40-IA-2. Insolvency.

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) A debtor who is generally not paying his (or her) debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under this article.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.


(a) Value is given for a transfer or an obligation if, in
exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of subdivision (2), subsection (a), section four, and subsection (a), section five, all of this article, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

§40-1A-4. Transfers fraudulent as to present and future creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that he (or she) would incur, debts beyond his (or her) ability to pay as they became due.

(b) In determining actual intent under subdivision (1), subsection (a), consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;
(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

§40-1A-5. Transfers fraudulent as to present creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent.

§40-1A-6. When transfer is made or obligation is incurred.

For the purposes of this article:

(a) A transfer is made:

(1) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser
of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(2) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this article that is superior to the interest of the transferee;

(b) If applicable law permits the transfer to be perfected as provided in subdivision (a) and the transfer is not so perfected before the commencement of an action for relief under this article, the transfer is considered made immediately before the commencement of the action;

(c) If applicable law does not permit the transfer to be perfected as provided in subdivision (a), the transfer is made when it becomes effective between the debtor and the transferee; and

(d) A transfer is not made until the debtor has acquired rights in the asset transferred and an obligation is incurred.

If the obligation is oral, a transfer is made when the obligation becomes effective. If the obligation is evidenced by a writing, the obligation becomes effective when the writing is delivered to or for the benefit of the obligee.

§40-1A-7. Remedies of creditors.

(a) In an action for relief against a transfer or obligation under this article, a creditor, subject to the limitations in section eight of this article, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim
against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

§40-1A-8. Defenses, liability and protection of transferee.

(a) A transfer or obligation is not voidable under subdivision (1), subsection (a), section four of this article, against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under subdivision (1), subsection (a), section seven of this article, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under subdivision (2), subsection (a), section four or section five, all of this article, if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
(2) Enforcement of a security interest in compliance with article nine of the uniform commercial code.

(f) A transfer is not voidable under subsection (b), section five of this article:

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.


A cause of action with respect to a fraudulent transfer or obligation under this article is extinguished unless action is brought:

(a) Under subdivision (1), subsection (a), section four of this article, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) Under subdivision (2), subsection (a), section four or subsection (a), section five of this article, within four years after the transfer was made or the obligation was incurred;

or

(c) Under subsection (b), section five of this article, within one year after the transfer was made or the obligation was incurred.

§40-1-10. Supplementary provisions.

Unless displaced by the provisions of this article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement its provisions.

§40-1A-11. Uniformity of application and construction.

This article shall be applied and construed to effectuate
its general purpose to make uniform the law with respect to
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,
filings, 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.
§47-9-9. Amendment to certificate.
§47-9-12. Judicial amendment or cancellation of certificate.
§47-9-16. Delivery of certificates to limited partners.
§47-9-17. Admission of limited partners.
§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.
§47-9-29. Sharing of profits and losses.
§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 requires:
2 (1) "Certificate of limited partnership" means the certificate referred to in section eight of this article and the certificate as amended;
3 (2) "Contribution" means any cash, property, services
rendered, or a promissory note or other binding obligation
to contribute cash or property or to perform services, which
a partner contributes to a limited partnership in his
capacity as a partner;

(3) "Event of withdrawal of a general partner" means
an event that causes a person to cease to be a general partner
as provided in section twenty-three of this article;

(4) "Foreign limited partnership" means a partnership
formed under the laws of any state other than this state and
having as partners one or more general partners and one or
more limited partners;

(5) "General partner" means a person who has been
admitted to a limited partnership as a general partner in
accordance with the partnership agreement and named in
the certificate of limited partnership as a general partner;

(6) "Limited partner" means a person who has been
admitted to a limited partnership as a limited partner in
accordance with the partnership agreement;

(7) "Limited partnership" and "domestic limited
partnership" means a partnership formed by two or more
persons under the laws of this state and having one or more
general partners and one or more limited partners;

(8) "Partner" means a limited or general partner;

(9) "Partnership agreement" means any valid
agreement, written or oral, of the partners as to the affairs
of a limited partnership and the conduct of its business;

(10) "Partnership interest" means a partner's share of
the profits and losses of a limited partnership and the right
to receive distributions of partnership assets;

(11) "Person" means a natural person, partnership,
limited partnership (domestic or foreign), trust, estate,
association or corporation; and

(12) "State" means a state, territory or possession of the
United States, the District of Columbia or the
Commonwealth of Puerto Rico.

§47-9-2. Name of limited partnership.

The name of each limited partnership as set forth in its
certificate of limited partnership:

(1) Shall contain without abbreviation the words
"limited partnership";

(2) May not contain the name of a limited partner unless
§47-9-3. Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited partnership under this article and to adopt that name;

(2) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) Any foreign limited partnership intending to register in this state and adopt that name; and

(4) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(b) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve that name for the exclusive use of the applicant for a period of one hundred twenty days. Once the applicant reserves a name he may not reserve the same name again until more than sixty days after the expiration of the one hundred twenty day period for which the name was last reserved. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.
§47-9-5. Office and records.

(a) Each limited partnership shall continuously maintain in this state an office, which may, but need not be, a place of its business in this state, at which shall be kept the following records:

(1) A current list of the full name and last known business address of each partner, separately identifying the general and the limited partners, set forth in alphabetical order;

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any power of attorney pursuant to which any certificate has been executed;

(3) A copy of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent years;

(4) A copy of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years; and

(5) Unless contained in a written partnership agreement, a writing setting out:

(A) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(B) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(C) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

(D) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) Such records shall be available for inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.


(a) In order to form a limited partnership, two or more persons must execute a certificate of limited partnership. The certificate shall be filed in the office of the secretary of state and set forth:
§47-9-9. Amendment to certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

(1) The name of the limited partnership;
(2) The date of the filing of the certificate; and
(3) The amendment to the certificate.

(b) Within thirty days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

(1) The admission of a new partner;
(2) The withdrawal of a partner; or
(3) The continuation of the business under section forty-four of this article after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to
reflect the occurrence of any event referred to in subsection (b) of this section if the amendment is filed within the thirty-day period specified in subsection (b).

(f) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.


(a) Each certificate required by this article to be filed in the office of the secretary of state shall be executed in the following manner:

1. An original certificate of limited partnership must be signed by all general partners;
2. A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; and
3. A certificate of cancellation must be signed by all general partners.

(b) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

§47-9-12. Judicial amendment or cancellation of certificate.

If a person required by section eleven of this article to execute a certificate of amendment or cancellation fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the appropriate circuit court to direct the execution of the certificate. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate of amendment or cancellation.


(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, shall be delivered to the secretary of state. No photostatic copies may be used. A person who executes a
certificate as an agent or fiduciary need not exhibit
evidence of his authority as a prerequisite to filing. Unless
the secretary of state finds that any certificate does not
conform to law, upon receipt of all filing fees required by
law, he shall:
(1) Endorse on each duplicate original the word “Filed”
and the day, month and year of the filing thereof;
(2) File one duplicate original in his office; and
(3) Return the other duplicate original to the person
who filed it or his representative.
(b) Upon the filing of a certificate of amendment, or
judicial decree of amendment, in the office of the secretary
of state the certificate of limited partnership shall be
amended as set forth therein, and upon the effective date of
a certificate of cancellation, or a judicial decree thereof, the
certificate of limited partnership is canceled.
(c) The certificate of limited partnership and any
certificates of amendment or cancellation, or of any judicial
decree of amendment or cancellation, or a duly certified
copy thereof, shall be recorded in the office of the clerk of
the county commission of the county in which such office, as
required by section five of this article, is located.
This filing, or failure to file, shall in no way affect the
formation of the limited partnership. Only the filing in the
office of the secretary of state, required by section eight of
this article, shall determine the validity of the limited
partnership.
The fact that a certificate of limited partnership is on file
in the office of the secretary of state is notice that the
partnership is a limited partnership and the persons
designated therein as general partners are general partners,
but it is not notice of any other fact.
§47-9-16. Delivery of certificates to limited partners.
Upon the return by the secretary of state pursuant to
section thirteen of this article of a certificate marked
"Filed," the general partners shall promptly deliver or mail
a copy of the certificate of limited partnership and each
certificate of amendment or cancellation to each limited
partner unless the partnership agreement provides
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.


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;
(3) Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(4) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(5) Requesting or attending a meeting of partners;

(6) Proposing, approving or disapproving, by voting or otherwise on one or more of the following matters:

(i) The dissolution and winding up of the limited partnership;

(ii) The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited partnership;

(iii) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) A change in the nature of the business;

(v) The admission or removal of a general partner;

(vi) The admission or removal of a limited partner;

(vii) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) An amendment to the partnership agreement or certificate of limited partnership; or

(ix) Matters related to the business of the limited partnership not otherwise enumerated in this subsection (b), which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(7) Winding up the limited partnership pursuant to section forty-six of this article; or

(8) Exercising any right or power permitted to limited partners under this article and not specifically enumerated in this subsection (b).

(c) The enumeration in subsection (b) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subdivision (2), section...
two of this article, is liable to creditors who extend credit to
the limited partnership without actual knowledge that the
limited partner is not a general partner.

§47-9-20. Person erroneously believing himself limited
partner.

(a) Except as provided in subsection (b) of this section, a
person who makes a contribution to a business enterprise
and erroneously but in good faith believes that he has
become a limited partner in the enterprise is not a general
partner in the enterprise and is not bound by its obligations
by reason of making the contribution, receiving
distributions from the enterprise, or exercising any rights of
a limited partner, if, on ascertaining the mistake, he:

(1) Causes an appropriate certificate of limited
partnership or a certificate of amendment to be executed
and filed; or

(2) Withdraws from future equity participation in the
enterprise by executing and filing in the office of the
secretary of state a certificate declaring withdrawal under
this section.

(b) A person who makes a contribution of the kind
described in subsection (a) of this section, is liable as a
general partner to any third party who transacts business
with the enterprise (i) before the person withdraws and an
appropriate certificate is filed to show withdrawal, or (ii)
before an appropriate certificate is filed to show that he is
not a general partner, but in either case only if the third
party actually believed in good faith that the person was a
general partner at the time of the transaction.

§47-9-22. Admission of additional general partners.

After the filing of a limited partnership's original
certificate of limited partnership, additional general
partners may be admitted as provided in writing in the
partnership agreement or, if the partnership agreement
does not provide in writing for the admissions of additional
general partners, with the written consent of all partners.

§47-9-23. Events of withdrawal of general partner.

Except as approved by the specific written consent of all
partners at the time, a person ceases to be a general partner
of a limited partnership upon the happening of any of the following events:

1. The general partner with draws from the limited partnership as provided in section thirty-two of this article;
2. The general partner ceases to be a member of the limited partnership as provided in section forty of this article;
3. The general partner is removed as a general partner in accordance with the partnership agreement;
4. Unless otherwise provided for in writing in the partnership agreement, the general partner (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties;
5. Unless otherwise provided in writing in the partnership agreement, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety days after the expiration of any such stay, the appointment is not vacated;
6. In the case of a general partner who is a natural person, (i) his death; or (ii) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;
7. In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the 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.


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

1 Distributions of cash or other assets of a limited partnership shall be allocated among the partners and classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept by section five of this article, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

§47-9-31. Interim distributions.

1 Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

§47-9-33. Withdrawal of limited partner.

1 A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

§47-9-35. Distribution in kind.

1 Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any
distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

§47-9-38. Liability upon return of contribution.

(a) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this article, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this article, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the records required to be kept by section five of this article, of his contribution which has not been distributed to him.

§47-9-42. Right of assignee to become limited partner.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the assignor gives the assignee that right in accordance with authority described in the partnership agreement, or (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this article. An assignee who becomes a limited partner also is liable for the obligations
of his assignor to make and return contributions as
provided in section thirty-eight of this article: Provided,
That the assignee is not obligated for liabilities unknown to
the assignee at the time he became a limited partner.
(c) If an assignee of a partnership interest becomes a
limited partner, the assignor is not released from his
liability to the limited partnership under sections fourteen
and twenty-eight of this article.

§47-9-44. Nonjudicial dissolution.

A limited partnership is dissolved and its affairs shall be
wound up upon the happening of the first to occur of the
following:
(1) At the time or upon the happening of events specified
in the certificate of limited partnership;
(2) Upon the happening of events specified in writing in
the partnership agreement;
(3) The written consent of all partners;
(4) An event of withdrawal of a general partner, unless
at the time there is at least one other general partner and the
written provisions of the partnership agreement permit the
business of the limited partnership to be carried on by the
remaining general partner and that partner does so, but the
limited partnership is not dissolved and is not required to be
wound up by reason of any event of withdrawal if, within
ninety days after the withdrawal, all partners agree in
writing to continue the business of the limited partnership
and to the appointment of one or more additional general
partners if necessary or desired; or
(5) Entry of a decree of judicial dissolution under
section forty-five of this article.

§47-9-49. Registration of foreign limited partnership.

Before transacting business in this state, a foreign limited
partnership shall register with the secretary of state. In
order to register, a foreign limited partnership shall submit
to the secretary of state, in duplicate, an application for
registration as a foreign limited partnership, signed and
sworn to by a general partner and setting forth:
(1) The name of the foreign limited partnership and, if
different, the name under which it proposes to register and
transact business in this state;
(2) The state and date of its formation;
(3) The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint: Provided, That the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in and authorized to do business in this state;
(4) A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under subdivision (3) of this section or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;
(5) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;
(6) The name and business address of each general partner; and
(7) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

§47-9-50. Issuance of registration; filing in the office of the clerk of the county commission.

(a) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:
(1) Endorse on the application the word "Filed," and the month, day and year of the filing thereof;
(2) File in his office a duplicate original of the application; and
(3) Issue a certificate of registration to transact business in this state.
(b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.
(c) The certificate of registration, or a duly certified
copy thereof, shall be recorded in the office of the clerk of the county commission of the county where the principal office of the limited partnership in this state is located. If such limited partnership does not maintain a principal office in this state, the recordation may be completed in any county in which the limited partnership is conducting its affairs or doing or transacting business.

This filing, or failure to file, shall in no way affect the formation of the limited partnership. Only the filing in the office of the secretary of state, required by section eight of this article, shall determine the validity of the limited partnership.

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.
§47-22-1. Definitions.

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

3 (a) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means.

7 (b) "Misappropriation" means:

8 (1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

11 (2) Disclosure or use of another person's trade secret without the other's express or implied consent by a person who:

14 (A) Used improper means to acquire knowledge of the trade secret; or

16 (B) At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

19 (i) Derived from or through a person who had utilized improper means to acquire it; or

21 (ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

23 (iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

26 (C) Before a material change of his position, knew or had reason to know that the information was a trade secret and that knowledge of it had been acquired by accident or mistake.

30 (c) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint
venture, government, governmental subdivision or agency or any other legal or commercial entity.

(d) "Trade secret" means information, including, but not limited to, a formula, pattern, compilation, program, device, method, technique or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§47-22-2. Injunctive relief.

(a) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which the use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of a misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

§47-22-3. Damages.

(a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages may include both the actual loss caused by the misappropriation and the unjust enrichment caused by the misappropriation. In lieu of
damages measured by any other methods, the damages
caused by misappropriation may be measured by imposi-
tion of liability for a reasonable royalty for a misappro-
priator's unauthorized disclosure or use of a trade secret.

(b) If willful and malicious misappropriation occurs,
the court may award exemplary damages in an amount
not exceeding twice any award made under subsection
(a) of this section.

§47-22-4. Attorney's fees.
If (a) a claim of misappropriation is made in bad faith,
or (b) a motion to terminate an injunction is made or
resisted in bad faith, or (c) willful and malicious mis-
appropriation occurs, the court may award reasonable
attorney's fees to the prevailing party.

§47-22-5. Preservation of secrecy.
In an action brought pursuant to this article, a court
shall preserve the secrecy of an alleged trade secret by
reasonable means, which may include granting protective
orders in connection with discovery proceedings, holding
in camera hearings, sealing the records of the action and
ordering any person involved in the litigation not to dis-
lose an alleged trade secret without prior court approval.

An action for misappropriation must be brought within
three years after the misappropriation is discovered or,
by the exercise of reasonable diligence, should have been
discovered. For the purposes of this section, a continuing
misappropriation constitutes a single claim.

§47-22-7. Effect on other law.
(a) Except as provided in subsection (b) of this section
this article displaces conflicting tort, restitutionary and
other law of this state providing civil remedies for mis-
appropriation of a trade secret.

(b) This article does not affect:
(1) Contractual remedies, whether or not based upon
misappropriation of a trade secret;
(2) Other civil remedies that are not based upon mis-
§47-22-8. Uniformity of application and construction.

1 This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.


1 This article may be cited as the "Uniform Trade Secrets Act."

§47-22-10. Time of taking effect.

1 This article takes effect on the first day of July, one thousand nine hundred eighty-six, and does not apply to misappropriations occurring prior to the effective date or to misappropriations which began prior to the effective 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:
   1. (1) "Adult" means an individual who has attained the age of twenty-one years.
   2. (2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
   3. (3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
   4. (4) "Conservator" means a person appointed or qualified by a court to act as general, limited or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
   5. (5) "Court" means any circuit court.
   6. (6) "Custodial property" means (i) any interest in property transferred to a custodian under this article and (ii) the income from and proceeds of that interest in
(7) "Custodian" means a person so designated under section nine or a successor or substitute custodian designated under section eighteen of this article.

(8) "Financial institution" means a bank, trust company, savings institution or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means the personal representative or conservator of an individual.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of twenty-one years.

(12) "Person" means an individual, corporation, organization or other legal entity.

(13) "Personal representative" means an executor, administrator, successor, personal representative or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under section nine of this article.

(16) "Transferor" means a person who makes a transfer under this article.

(17) "Trust company" means a financial institution, corporation or other legal entity authorized to exercise general trust powers.

§36-7-2. Scope and jurisdiction.

(a) This article applies to a transfer that refers to this article in the designation under subsection (a), section nine, by which the transfer is made if at the time of the transfer, the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this article despite a subsequent change in residence of a transferor, the minor or the custodian, or the removal of custodial property.
from this state.
(b) A person designated as custodian under this article
is subject to personal jurisdiction in this state with respect
to any matter relating to the custodianship.
(c) A transfer that purports to be made and which is
valid under the Uniform Transfers to Minors Act, the
Uniform Gifts to Minors Act or a substantially similar act of
another state is governed by the law of the designated state
and may be executed and is enforceable in this state if at the
time of the transfer, the transferor, the minor or the
custodian is a resident of the designated state or the
custodial property is located in the designated state.

§36-7-3. Nomination of custodian.
(a) A person having the right to designate the recipient
of property transferable upon the occurrence of a future
event may revocably nominate a custodian to receive the
property for a minor beneficiary upon the occurrence of the
event by naming the custodian followed in substance by the
words: "As custodian for ............... (name of minor)
under the Uniform Transfers to Minors Act." The
nomination may name one or more persons as substitute
custodians to whom the property must be transferred, in the
order named, if the first nominated custodian dies before
the transfer or is unable, declines or is ineligible to serve.
The nomination may be made in a will, a trust, a deed, an
instrument exercising a power of appointment or in a
writing designating a beneficiary of contractual rights
which is registered with or delivered to the payor, issuer or
other obligor of the contractual rights.
(b) A custodian nominated under this section must be a
person to whom a transfer of property of that kind may be
made under subsection (a), section nine of this article.
(c) The nomination of a custodian under this section
does not create custodial property until the nominating
instrument becomes irrevocable or a transfer to the
nominated custodian is completed under section nine of this
article. Unless the nomination of a custodian has been
revoked, upon the occurrence of the future event the
custodianship becomes effective and the custodian shall
enforce a transfer of the custodial property pursuant to
section nine of this article.
§36-7-4. Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section nine of this article.

§36-7-5. Transfer authorized by will or trust.

(a) A personal representative or trustee may make an irrevocable transfer pursuant to section nine of this article to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under section three of this article to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under section three of this article or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under subsection (a), section nine of this article.

§36-7-6. Other transfer by fiduciary.

(a) Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section nine of this article in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section nine of this article.

(c) A transfer under subsection (a) or (b) may be made only if (i) the personal representative, trustee or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument and (iii) the transfer is authorized by the court if it exceeds ten thousand dollars in value.
§36-7-7. Transfer by obligor.

(a) Subject to subsections (b) and (c) of this section, a person not subject to section five or six of this article who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section nine of this article.

(b) If a person having the right to do so under section three of this article has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under section three of this article, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars in value.

§36-7-8. Receipt for custodial property.

A written acknowledgement of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this article.

§36-7-9. Manner of creating custodial property and effecting transfer; designation of initial custodian; control.

(a) Custodial property is created and a transfer is made whenever:

(1) An uncertificated security or a certificated security in registered form is either:

(i) Registered in the name of the transferor or an adult other than the transferor or a trust company, followed in substance by the words: “As custodian for .............. (name of minor) under the West Virginia Uniform Transfers to Minors Act”; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b).
Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor or an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for .............. (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(3) The ownership of a life or endowment insurance policy or annuity contract is either:
   (i) Registered with the issuer in the name of the transferor or an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for .............. (name of minor) under the West Virginia Uniform Transfers to Minors Act"; or
   (ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "As custodian for .............. (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(4) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer or other obligor that the right is transferred to the transferor or an adult other than the transferor or a trust company, whose name in the notification is followed in substance by the words: "As custodian for .............. (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(5) An interest in real property is recorded in the name of the transferor or an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for .............. (name of minor) under the West Virginia Uniform Transfers to Minors Act."

(6) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:
   (i) Issued in the name of the transferor or an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for .............. (name of minor) under the West Virginia Uniform Transfers to Minors Act"; or
   (ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in
substance by the words: "As custodian for ................
(name of minor) under the West Virginia Uniform Transfers

(7) An interest in any property not described in
subdivisions (1) through (6) is transferred to an adult other
than the transferor or to a trust company by a written
instrument in substantially the form set forth in subsection
(b).
(b) An instrument in the following form satisfies the
requirements of paragraph (ii), subdivision (1) and
subdivision (7) of subsection (a):
"TRANSFER UNDER THE WEST VIRGINIA
UNIFORM TRANSFERS TO MINORS ACT
I, .................. (name of transferor or name and
representative capacity if a fiduciary) hereby transfer to
 .................. (name of Custodian), as Custodian for
 .................. (name of minor) under the
West Virginia Uniform Transfers to Minors Act, the
following: (Insert a description of the custodial property
sufficient to identify it).
Dated: .............

.......................... (Signature)
 .................. (name of custodian) acknowledges receipt
of the property described above as custodian for the minor
named above under the West Virginia Uniform Transfers to
Minors Act.
Dated: .............

.......................... (Signature of Custodian)
(c) A transferor shall place the custodian in control of
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
person may be the custodian. All custodial property held
under this article by the same custodian for the benefit of
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
prescribed in this article is not affected by:
(1) Failure of the transferor to comply with subsection (c), section nine, concerning possession and control;
(2) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under subsection (a), section nine; or
(3) Death or incapacity of a person nominated under section three or designated under section nine as custodian or the disclaimer of the office by that person.
(b) A transfer made pursuant to section nine is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in this article and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in this article.
(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this article and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this article.
§36-7-12. Care of custodial property.
(a) A custodian shall:
(1) Take control of custodial property;
(2) Register or record title to custodial property if appropriate; and
(3) Collect, hold, manage, invest and reinvest custodial property.
(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.
(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor
only if the minor or the minor's estate is the sole beneficiary,
or (ii) the life of another person in whom the minor has an
insurable interest only to the extent that the minor, the
minor's estate or the custodian in the capacity of custodian,
is the irrevocable beneficiary.
(d) A custodian at all times shall keep custodial
property separate and distinct from all other property in a
manner sufficient to identify it clearly as custodial property
of the minor. Custodial property consisting of an undivided
interest is so identified if the minor's interest is held as a
tenant in common and is fixed. Custodial property subject
to recordation is so identified if it is recorded, and custodial
property subject to registration is so identified if it is either
registered, or held in an account designated, in the name of
the custodian, followed in substance by the words: "As a
custodian for .................. (name of minor) under the
West Virginia Uniform Transfers to Minors Act."
(e) A custodian shall keep records of all transactions
with respect to custodial property, including information
necessary for the preparation of the minor's tax returns,
and shall make them available for inspection at reasonable
intervals by a parent or legal representative of the minor or
by the minor if the minor has attained the age of fourteen
years.
§36-7-13. Powers of custodian.
(a) A custodian, acting in a custodial capacity, has all
the rights, powers and authority over custodial property
that unmarried adult owners have over their own property,
but a custodian may exercise those rights, powers and
authority in that capacity only.
(b) This section does not relieve a custodian from
liability for breach of section twelve of this article.
§36-7-14. Use of custodial property.
(a) A custodian may deliver or pay to the minor or
expend for the minor's benefit so much of the custodial
property as the custodian considers advisable for the use
and benefit of the minor, without court order and without
regard to (i) the duty or ability of the custodian personally
or of any other person to support the minor, or (ii) any other
income or property of the minor which may be applicable or
On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

A delivery, payment or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

§36-7-15. Custodian's expenses, compensation and bond.

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under section four of this article, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in subsection (f), section eighteen of this article, a custodian need not give a bond.

§36-7-16. Exemption of third person from liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) The validity of the purported custodian's designation;

(2) The propriety of, or the authority under this article for, any act of the purported custodian;

(3) The validity or propriety under this article of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian.

§36-7-17. Liability to third persons.

(a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation
arising from the ownership or control of custodial property or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable:

(1) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

§36-7-18. Renunciation, resignation, death or removal of custodian; designation of successor custodian.

(a) A person nominated under section three of this article or designated under section nine of this article as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under section three of this article, the person who made the nomination may nominate a substitute custodian under section three of this article; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under subsection (a), section nine. The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under section four as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take
effect until the custodian resigns, dies, becomes incapacitated or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (b) of this section an adult member of the minor's family, a conservator of the minor or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) of this section or resigns under subsection (c) of this section or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section four or to require the custodian to give appropriate bond.

§36-7-19. Accounting by and determination of liability of custodian.

(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 it is otherwise specially provided, may hereafter be brought in the circuit court of any county:

2 (1) Wherein any of the defendants may reside or the cause of action arose, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered or some part thereof, is; or

3 (2) If a corporation be a defendant, wherein its principal office is, or wherein its mayor, president or other chief officer resides; or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it be a corporation organized under the laws of this state, which has its principal office located outside of this state, and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides or the circuit court of the county in which the seat of state government is located shall have jurisdiction of all actions at law or suits in equity against such corporation, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management; or

4 (3) If it be to recover land or subject it to a debt, wherein such land or any part thereof may be; or
(4) If it be against one or more nonresidents of the state, wherein any one of them may be found and served with process, or may have estate or debts due him or them; or

(5) If it be to recover a loss under any policy of insurance, upon either property, life or health, or against injury to a person, wherein the property insured was situated either at the date of the policy or at the time when the right of action accrued; or the person insured had a legal residence at the date of his death or at the time when the right of action accrued; or

(6) If it be on behalf of the state in the name of the attorney general or otherwise, wherein the seat of government is; or

(7) If a judge of a circuit be interested in a case which, but for such interest, would be proper for the jurisdiction of his court, the action or suit may be brought in any county in an adjoining circuit.

(b) Whenever a civil action or proceeding is brought in the county wherein the cause of action arose, under the provisions of subsection (a) of this section, if no defendant resides in such county, a defendant to the action or proceeding may move the court before which the action is pending for a change of venue to a county wherein one or more of the defendants resides, and upon a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by such change of venue, 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.
The state of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company and other emergency service organizations as defined by article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and are hereby required to subscribe to and pay premiums into the workers' compensation fund for the protection of their employees and shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rate, classification and premium payment: Provided, That such rates will be adjusted by the commissioner to reflect the demand on the compensation fund by the covered employer.

The following employers are not required to subscribe to the fund, but may elect to do so:

(1) Employers of employees in domestic services; or
(2) Employers of five or fewer full-time employees in agricultural service; or
(3) Employers of employees while said employees are
employed without the state except in cases of temporary
employment without the state; or

(4) Casual employers. An employer is deemed to be a
casual employer when the number of his employees does
not exceed three and the period of employment is
temporary, intermittent and sporadic in nature and does
not exceed ten calendar days in any calendar quarter;

(5) Churches;

(6) Employers engaged in organized professional
sports activities, including employers of trainers and
jockeys engaged in thoroughbred horse racing; or

(7) Employers of employees who are officers of and
stockholders in a corporation qualifying for special tax
treatment under subchapter S of the Internal Revenue
Code of the United States.

If an employer is a partnership, sole proprietorship,
association or corporation, such employer may elect to
include as an "employee" within this chapter, any
member of such partnership, the owner of the sole
proprietorship, or any corporate or executive officer of
the association or corporation. In the event of such
election, the employer shall serve upon the commissioner
written notice naming the persons to be covered and
shall include such "employee's" remuneration for
premium purposes in all future payroll reports, and no
such partner, proprietor or corporate or executive
officer shall be deemed an employee within the meaning
of this chapter until such notice has been served.

Notwithstanding any other provision of this chapter
to the contrary, whenever there are churches in a circuit
which employ one individual clergyman and the pay­
ments to such clergyman from such churches constitute
his full salary, such circuit or group of churches may
elect to be considered a single employer for the purpose
of premium payment into the workers' compensation
fund.

Employers who are not required to subscribe to the
workers' compensation fund may voluntarily choose to
subscribe to and pay premiums into the fund for the
protection of their employees and in such case shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rates, classifications and premium payments and shall afford to them the protection of this chapter, including section six of this article, but the failure of such employers to choose to subscribe to and to pay premiums into the fund shall not impose any liability upon them other than such liability as would exist notwithstanding the provisions of this chapter.

Any foreign corporation employer whose employment in this state is to be for a definite or limited period which could not be considered "regularly employing" within the meaning of this section may choose to pay into the workers' compensation fund the premiums herein provided for, and at the time of making application to the commissioner, such employer shall furnish a statement under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly payroll and any other information which may be required by the commissioner. At the time of making application such employer shall deposit with the state compensation commissioner to the credit of the workers' compensation fund the amount required by section five of this article, which amount shall be returned to the employer if his application be rejected by the commissioner. Upon notice to such employer of the acceptance of his application by the commissioner, he shall be an employer within the meaning of this chapter and subject to all of its provisions.

Any foreign corporation employer choosing to comply with the provisions of this chapter and to receive the benefits hereunder shall, at the time of making application to the commissioner, in addition to other requirements of this chapter, furnish such commissioner with a certificate from the secretary of state, where such certificate is necessary, showing that it has complied with all the requirements necessary to enable it legally to do business in this state and no application of such foreign corporation employer shall be accepted by the
§23-2-la. Employees subject to chapter.

Employees subject to this chapter are all persons in the service of employers and employed by them for the purpose of carrying on the industry, business, service or work in which they are engaged, including, but not limited to, persons regularly employed in the state whose duties necessitate employment of a temporary or transitory nature by the same employer without the state, every person in the service of the state or of any political subdivision or agency thereof, under any contract of hire, express or implied, and every official or officer thereof, whether elected or appointed, while performing his official duties, checkweighmen employed according to law, all members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the director of the department of mines and all forest fire fighters who, under the supervision of the director of the department of natural resources or his designated representative, assist in the prevention, confinement and suppression of any forest fire.

The right to receive compensation under this chapter shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of this state relating to the employment of minors, or that he obtained his employment by misrepresenting his age.

§23-2-lb. Special provisions as to premiums.

Every executive officer of an association or of a corporation, any member of a partnership or owner of a sole proprietorship which has elected coverage under this chapter for such member or owner shall pay premiums based upon the actual salary paid to such employee up to an amount sufficient to qualify such employee to receive the maximum level of benefits, but in no event shall the basis for premium be less than the salary necessary to provide such employee with the minimum level of benefits.
The premium and actual expenses in connection with governmental agencies and departments of the state of West Virginia shall be paid out of the state treasury from appropriations made for such agencies and departments, in the same manner as other disbursements are made by such agencies and departments.

County commissions, municipalities, other political subdivisions of the state, county boards of education, emergency service organizations organized as aforesaid and volunteer fire departments or companies shall provide for the funds to pay their prescribed premiums into the fund and such premiums and premiums of state agencies and departments, including county boards of education, shall be paid into the fund in the same manner as herein provided for other employers subject to this chapter.

County commissions and municipalities are hereby authorized to pay all or any part of the premiums prescribed for such emergency service organizations organized as aforesaid and such duly incorporated volunteer fire departments or companies as may provide 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.

(a) For the purpose of creating a workers' compensation fund each employer who is required to subscribe to the fund or who elects to subscribe to the fund, shall pay premiums calculated as a percentage of the employer's payroll at the rate determined by the commissioner and then in effect. At the time each employer subscribes to the fund, the application required by the commissioner shall be filed and a premium deposit equal to the first quarter's estimated premium payment shall be remitted. The minimum quarterly premium to be paid by any employer shall be ten dollars.

Thereafter, premiums shall be paid quarterly on or before the last day of the month following the end of the quarter, and shall be the prescribed percentage of the
total earnings of all employees during the preceding quarter.

At the time each premium is paid, every subscribing employer shall make a payroll report to the commissioner for the preceding quarter. The report shall be on the form or forms prescribed by the commissioner, and shall contain all information required by the commissioner.

After subscribing to the fund, each employer shall remit with each payroll report and premium payment, an amount calculated to be sufficient to maintain a premium deposit equal to the previous quarter's premium payment: Provided, That the commissioner may reduce the amount of the premium deposit required from seasonal employers for those quarters during which employment is significantly reduced. The premium deposit shall be credited to the employer's account on the books of the commissioner and used to pay premiums and any other sums due the fund when an employer becomes delinquent.

All premiums and premium deposits required to be paid by this chapter shall be paid by the employers to the workers' compensation commissioner, who shall maintain record of all sums so received. All sums received by the commissioner shall be deposited in the state treasury to the credit of the workers' compensation fund in the manner now prescribed by law.

(b) Failure of an employer to timely pay premium, to timely file a payroll report, or to maintain an adequate premium deposit, shall cause the employer's account to become delinquent. No employer will be declared delinquent or be assessed any penalty therefor if the commissioner determines that such delinquency has been caused by delays in the administration of the fund. The commissioner shall, in writing, within sixty days of the end of each quarter notify all delinquent employers of their failure to timely pay premiums, to timely file a payroll report, or to maintain an adequate premium deposit. The notification shall demand the filing of the delinquent payroll report and payment of delinquent
premiums, and/or payment of an amount sufficient to maintain the premium deposit, before the end of the third month following the end of the preceding quarter. The notification shall also require payment of interest on the delinquent premium payment and/or premium deposit pursuant to section thirteen of this article.

(c) Whenever the commissioner notifies an employer of the delinquent status of his account, the notification shall explain the legal consequence of subsequent default by employers required to subscribe to the fund, and the effects of termination of any electing employer's account.

(d) Failure by the employer, who is required to subscribe to the fund and who fails to resolve his delinquency within the prescribed period, shall place the account in default and shall deprive such defaulting employer of the benefits and protection afforded by this chapter including section six of this article, and he shall be liable as provided in section eight of this article. The defaulting employer's liability under section eight of this article shall be retroactive to twelve o'clock p.m., of the last day of the month following the end of the quarter for which the delinquency occurs. The commissioner shall notify the defaulting employer of the method by which the employer may be reinstated with the fund. The commissioner shall also notify the employees of such employer by written notice as hereinafter provided for in this section.

(e) Failure by any employer, who voluntarily elects to subscribe, to resolve his delinquency within the prescribed period, shall automatically terminate the election of such employer to pay into the workers' compensation fund and shall deprive such delinquent employer of the benefits and protection afforded by this chapter including section six of this article, and he shall be liable as provided in section eight of this article. The defaulting employer's liability under section eight of this article shall be retroactive to twelve o'clock p.m., of the last day of the month following the end of the quarter for which the delinquency occurs.
(f) Any employer, who is required to subscribe to the fund and subsequently defaults, or who elects to subscribe and subsequently his account is terminated, shall be restored immediately to the benefits and protection of this chapter only upon the filing of all delinquent payroll and other reports required by the commissioner and payment into the fund of all unpaid premiums, an adequate premium deposit, accrued interest and claims losses paid during the period of delinquency and default: Provided, That the penalty for interest and claims losses paid by the fund during the period of delinquency and default shall not exceed an amount equal to fifty percent of the premium otherwise due and owing for the period of delinquency and default: Provided, however, That the period for which such penalty is assessed may be limited to a period of five (5) years immediately preceding the date of the commissioner's receipt of the employer's application for reinstatement. The commissioner shall, upon written application for reinstatement filed by an employer, order that an administrative hearing be held prior to reinstatement to determine the terms of repayment of all delinquent premiums, premium deposits and accrued interest, and the extent to which interest and claims losses may be waived, equitably considering, (1) the exact nature of the default, (2) the amount of the claims losses, (3) the solvency of the fund, (4) the financial condition of the employer, (5) the degree of willfullness exhibited by the employer's conduct resulting in the default, and (6) the potential economic impact upon the state and the specific geographic area in which the employer is located, if the employer should cease operations. Any such administrative hearing shall be conducted pursuant to article five, chapter twenty-nine-a of this code.

Applications for reinstatement shall: (1) Be made upon forms prescribed by the commissioner; (2) include a report of the gross payroll of the employer during the entire period of default, which payroll information shall be verified by the employer or its authorized agent; and (3) include a payment equal to one half of one percent of the gross payroll reported during the period of
default, or one hundred dollars, whichever amount shall be greater. An employer who applies for reinstatement shall be entitled to the benefits and protection of this chapter on the day the application is received by the commissioner: Provided, That if the commissioner reinstates an employer subject to the terms of a repayment agreement, the subsequent failure of the employer to make scheduled payments in accordance with the repayment agreement, to timely file current premiums or to restore the premium deposit to the required amount by the end of the repayment period shall cause the repayment agreement to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer's account originally became delinquent.

(g) No employee of an employer required by this chapter to subscribe to the workers' compensation fund shall be denied benefits provided by this chapter because the employer failed to subscribe or because the employer's account is either delinquent or in default.

(h) The provisions of this section shall not deprive any individual of any cause of action which has accrued as a result of an injury or death which occurred during any period of delinquency not resolved in accordance with the provisions of this article, or subsequent failure to comply with the terms of the repayment agreement.

Upon withdrawal from the fund or termination of election of any employer, he shall be refunded the balance due him of his deposit, after deducting all amounts owed by him to the workers' compensation fund, and the commissioner shall notify the employees of such employer of said termination in such manner as he may deem best and sufficient.

Notice to employees in this section provided for shall be given by posting written notice that the employer is delinquent under the compensation law of West Virginia, and in the case of employers required by this chapter to subscribe and pay premiums to the fund, that the delinquent employer is liable to his employees for
injury or death, both in workers' compensation benefits and in damages at common law or by statute; and, in the case of employers not required by this chapter to subscribe and pay premiums to the fund, but voluntarily electing to do so as herein provided, that neither the employer nor the employees of such employer are protected by said laws as to any injury or death sustained after the date specified in said notice. Such notice shall be in the form prescribed by the commissioner and shall be posted in a conspicuous place at the chief works of the employer, as the same appear in records of the commissioner. If the said chief works of the employer cannot be found or identified, then said notices shall be posted at the front door of the courthouse of the county in which said chief works are located, according to the records in the commissioner's office.

Any person who shall, prior to the reinstatement of the said employer, as hereinbefore provided for, or prior to sixty days after the posting of said notice, whichever shall first occur, remove, deface, or render illegible the said notice, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed five hundred dollars, and the said notice shall state this provision upon its face. The commissioner may require any sheriff, deputy sheriff, constable or other official of the State of West Virginia, who may be authorized to serve civil process, to post such notice and to make return thereof of the fact of such posting to the commissioner, and any failure of such officer to post any notice within ten days after he shall have received the same from the commissioner, without just cause or excuse, shall constitute a willful failure or refusal to perform a duty required of him by law within the meaning of section twenty-eight, article five, chapter sixty-one of this code. Any person actually injured by reason of such failure shall have an action against said official, and upon any official bond he may have given, for such damages as such person may actually have incurred, but not to exceed, in the case of any surety upon said bond, the amount of the penalty of said bond.

Any official posting said notice as herein required shall be entitled to the same fee as is now or may hereafter
be provided for the service of process in suits instituted in courts of record in the state of West Virginia, which fee shall be paid by the commissioner out of any funds at his disposal, but shall be charged by him against the account of the employer to whose delinquency such 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.


§23-4-15b. 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.

(a) In any claim for benefits under this chapter, the commissioner shall determine whether the claimant has sustained a compensable injury within the meaning of section one of this article, and he shall enter an order giving all parties immediate notice of such decision. Any party shall have the right to protest the order of the commissioner and obtain an evidentiary hearing as provided in section one, article five of this chapter.
(b) Where it appears from the employer's report, or from proper medical evidence, that a compensable injury will result in a disability which will last longer than three days as provided in section five of this article, the commissioner may immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, and payment of the expenses provided for in subdivision (a), section three of this article, relating to said injury, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall enter an order commencing the payment of temporary total disability or medical benefits within fifteen days of receipt of either the employee's or employer's report of injury, whichever is received sooner, and also upon receipt of either a proper physician's report or any other information necessary for a determination. The commissioner shall give to the parties immediate notice of any order granting temporary total disability or medical benefits.

(c) The commissioner may enter orders granting temporary total disability benefits upon receipt of medical evidence justifying the payment of such benefits. In no claim shall the commissioner enter an order granting prospective temporary total disability benefits for a period of more than ninety days: Provided, That when the commissioner determines that the claimant remains disabled beyond the period specified in the prior order granting temporary total disability benefits, the commissioner shall enter an order continuing the payment of temporary total disability benefits for an additional period not to exceed ninety days, and shall give immediate notice to all parties of such decision.

(d) Upon receipt of the first report of injury in a claim, the commissioner shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish the commis-
sioner with this information within fifteen days from the
date the commissioner received the first report of injury
in the case, the employee shall be paid temporary total
disability benefits for lost time at the rate the commis-
sioner believes would be justified by the usual rate of
pay for the occupation of the injured employee. The
commissioner shall adjust the rate of benefits both
retroactively and prospectively upon receipt of proper
wage information. The commissioner shall have access
to all wage information in the possession of any state
agency, including wage information received by the
department of employment security under chapter
twenty-one-a of this code, pertinent to such determina-
tion.

(e) Upon a finding of the commissioner that a claimant
who has sustained a previous compensable injury which
has been closed by any order of the commissioner, or by
the claimant's return to work, suffers further temporary
total disability or requires further medical or hospital
treatment resulting from the compensable injury, the
commissioner shall immediately enter an order com-
mencing the payment of temporary total disability
benefits to the claimant in the amount provided for in
sections six and fourteen of this article, and the expenses
provided for in subdivision (a), section three of this
article, relating to said disability, without waiting for
the expiration of the thirty-day period during which
objections may be filed to such findings as provided in
section one, article five of this chapter. The commis-
sioner shall give immediate notice to the parties of his
order.

(f) Where the employer is a subscriber to the workers'
compensation fund under the provisions of article three
of this chapter, and upon the findings aforesaid, the
commissioner shall mail all workers' compensation
checks paying temporary total disability benefits
directly to the claimant and not to the employer for
delivery to the claimant.

(g) Where the employer has elected to carry his own
risk under section nine, article two of this chapter, and
upon the findings aforesaid, the commissioner shall
immediately issue a pay order directing the employer

91 to pay such amounts as are due the claimant for
92 temporary total disability benefits. A copy of the order
93 shall be sent to the claimant. The self-insured employer
94 shall commence such payments by mailing or delivering
95 the payments directly to the employee within ten days
96 of the date of the receipt of the pay order by the
97 employer. If the self-insured employer believes that his
98 employee is entitled to benefits, he may start payments
99 before receiving a pay order from the commissioner.

(h) In the event an employer files a timely objection
100 to any order of the commissioner with respect to
101 compensability, or any order denying an application for
102 modification with respect to temporary total disability
103 benefits, or with respect to those expenses outlined in
104 subdivision (a), section three of this article, the commis-
105 sioner shall continue to pay to the claimant such benefits
106 and expenses during the period of such disability. Where
107 it is subsequently found by the commissioner that
108 the claimant was not entitled to receive such temporary
109 total disability benefits or expenses, or any part thereof,
110 so paid, the commissioner shall, when the employer is
111 a subscriber to the fund, credit said employer’s account
112 with the amount of the overpayment; and, when the
113 employer has elected to carry its own risk, the commis-
114 sioner shall refund to such employer the amount of the
115 overpayment. The amounts so credited to a subscriber
116 or repaid to a self-insurer shall be charged by the
117 commissioner to the surplus fund created in section one,
118 article three of this chapter.

(i) When the employer has protested the compensabil-
121 ity or applied for modification of a temporary total
122 disability benefit award or expenses and the final
123 decision in such case determines that the claimant was
124 not entitled to such benefits or expenses, the amount of
125 such benefits or expenses shall be deemed overpaid. The
126 commissioner may only recover the amount of such
127 benefits or expenses by withholding, in whole or in part,
128 as determined by the commissioner, future permanent
129 partial disability benefits payable to the individual in
130 the same or other claims and credit such amount against
the overpayment until it is repaid in full.

(j) In the event that the commissioner finds that based upon the employer's report of injury, the claim is not compensable, the commissioner shall provide a copy of such employer's report in addition to the order denying the claim.

§23-4-1d. Method and time of payments for permanent disability.

(a) If the commissioner makes an award for permanent partial or permanent total disability, the commissioner or self-insured employer shall start payment of benefits by mailing or delivering the amount due directly to the employee within fifteen days from the date of the award.

(b) If a timely protest to the award is filed, as provided in section one, article five of this chapter, the commissioner or self-insured employer shall continue to pay to the claimant such benefits during the period of such disability unless it is subsequently found by the commissioner that the claimant was not entitled to receive the benefits, or any part thereof, so paid, in which event the commissioner shall, where the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment; and, where the employer has elected to carry his own risk, the commissioner shall refund to such employer the amount of the overpayment. The amounts so credited to a subscriber or repaid to a self-insurer shall be charged by the commissioner to the surplus fund created by section one, article three of this chapter. If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him pursuant to a prior decision, such amount of benefits so paid shall be deemed overpaid. The commissioner may only recover such amount by withholding, in whole or in part, as determined by the commissioner, future permanent partial disability benefits payable to the individual in the same or other claims and credit such amount against 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.

Notwithstanding any provision of this code to the contrary, no person shall be jurisdictionally entitled to temporary total disability benefits for that period of time in excess of three days during which such person is incarcerated in a penitentiary or jail: Provided, That incarceration shall not affect the claimant's eligibility for payment of expenses. Upon release from confinement, the payment of benefits for the remaining period of temporary total disability shall be made if justified by the evidence and authorized by order of the commissioner.

§23-4-4. Funeral expenses.

In case the personal injury causes death, reasonable funeral expenses, not to exceed three thousand five hundred dollars, shall be paid from the fund, payment to be made to the persons who have furnished the services and supplies, or to the persons who have advanced payment for same, as the commissioner may deem proper, in addition to such award as may be made to the employee's dependents.

§23-4-6. Classification of disability benefits.

Where compensation is due an employee under the provisions of this chapter for personal injury, such compensation shall be as provided in the following schedule:

(a) The expressions "average weekly wage earnings, wherever earned, of the injured employee, at the date of injury" and "average weekly wage in West Virginia," as used in this chapter, shall have the meaning and shall be computed as set forth in section fourteen of this article.

(b) If the injury causes temporary total disability, the employee shall receive during the continuance thereof weekly benefits as follows: A maximum weekly benefit to be computed on the basis of seventy percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to exceed the
percentage of the average weekly wage in West Virginia, as follows: On or after July one, one thousand nine hundred sixty-nine, forty-five percent; on or after July one, one thousand nine hundred seventy, fifty percent; on or after July one, one thousand nine hundred seventy-one, fifty-five percent; on or after July one, one thousand nine hundred seventy-three, sixty percent; on or after July one, one thousand nine hundred seventy-four, eighty percent; on or after July one, one thousand nine hundred seventy-five, one hundred percent.

The minimum weekly benefits paid hereunder shall not be less than twenty-six dollars per week for injuries occurring on or after July one, one thousand nine hundred sixty-nine; not less than thirty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-one; not less than forty dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-three; not less than forty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-four; and for injuries occurring on or after July one, one thousand nine hundred seventy-six, thirty-three and one-third percent of the average weekly wage in West Virginia.

(c) Subdivision (b) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.

(d) If the injury causes permanent total disability, benefits shall be payable during the remainder of life at the maximum or minimum weekly benefits as provided in subdivision (b) of this section for temporary total disability. A permanent disability of eighty-five percent or more shall be deemed a permanent total disability for the purpose of this section. Under no circumstances shall the commissioner grant an additional permanent disability award to a claimant receiving a permanent total disability award, or to a claimant who has previously been granted permanent disability awards totaling eighty-five percent or more and hence is entitled to a permanent total disability.
Provided, That if any such claimant thereafter sustains another compensable injury and has permanent partial disability resulting therefrom, the total permanent disability award benefit rate shall be computed at the highest benefit rate justified by any of the compensable injuries, and the cost of any increase in such permanent total disability benefit rate shall be paid from the second injury reserve created by section one, article three of this chapter.

(e) If the injury causes permanent disability less than permanent total disability, the percentage of disability to total disability shall be determined and the award computed on the basis of four weeks' compensation for each percent of disability determined, at the following maximum or minimum benefit rates: Seventy percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to exceed the percentage of the average weekly wage in West Virginia, as follows: On or after July one, one thousand nine hundred sixty-nine, forty-five percent; on or after July one, one thousand nine hundred seventy, fifty percent; on or after July one, one thousand nine hundred seventy-one, fifty-five percent; on or after July one, one thousand nine hundred seventy-three, sixty percent; on or after July one, one thousand nine hundred seventy-five, sixty-six and two-thirds percent.

The minimum weekly benefit under this subdivision shall be as provided in subdivision (b) of this section for temporary total disability.

(f) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined by the commissioner, with the following table establishing the minimum percentage of disability. In determining the percentage of disability, the commissioner may be guided by, but shall not be limited to, the disabilities enumerated in the following table, and in no event shall the disability be less than that specified in the following table:

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 considered a five percent disability.
100 The loss of other toes shall be considered a four percent disability.
101 The loss of other toes (one phalanx) shall be considered a two percent disability.
102 The loss of all toes shall be considered a twenty-five percent disability.
103 The loss of forepart of foot shall be considered a thirty percent disability.
104 The loss of foot shall be considered a thirty-five percent disability.
105 The loss of a leg shall be considered a forty-five percent disability.
106 The loss of thigh shall be considered a fifty percent disability.
107 The loss of thigh at hip joint shall be considered a sixty percent disability.
108 The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.
109 The loss of a little or fourth finger shall be considered a five percent disability.
110 The loss of ring or third finger (one phalanx) shall be considered a three percent disability.
111 The loss of ring or third finger shall be considered a seven percent disability.
112 The loss of index or first finger (one phalanx) shall be considered a six percent disability.
113 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 consid-
140 ered 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
hearing of both ears shall be considered a fifty-five percent disability.

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.

Should a claimant sustain a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision, die from sickness or noncompensable injury before the commissioner makes the proper award for such injury, the commissioner shall make such award to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(g) Should a claimant to whom has been made a permanent partial award of from one percent to eighty-four percent, both inclusive, die from sickness or noncompensable injury, the unpaid balance of such award shall be paid to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(h) For the purposes of this chapter, a finding of the occupational pneumoconiosis board shall have the force and effect of an award.

(i) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from one percent to eighty-four percent shall be the same proportion and shall be computed and allowed by the commissioner.
(j) The percentage of all permanent disabilities other than those enumerated in subdivision (f) of this section shall be determined by the commissioner, and awards made in accordance with the provisions of subdivision (d) or (e) of this section. Where there has been an injury to a member as distinguished from total loss by severance of that member, the commissioner in determining the percentage of disability may be guided by, but shall not be limited to, the disabilities enumerated in subdivision (f) of this section.

(k) Compensation payable under any subdivision of this section shall not exceed the maximum nor be less than the weekly benefits specified in subdivision (b) of this section.

(l) Except as otherwise specifically provided in this chapter, temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivision (e) or (f) of this section. Compensation, either temporary total or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his death, if he had lived, shall be paid to the dependants of such injured employee if there be such dependents at the time of death.

(m) The following permanent disabilities shall be conclusively presumed to be total in character:

- Loss of both eyes or the sight thereof.
- Loss of both hands or the use thereof.
- Loss of both feet or the use thereof.
- Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the provisions of subdivision (d) or (e).

(n) A disability which renders the injured employee
able to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability.

§23-4-6b. Occupational hearing loss claims.

(a) In all claims for occupational hearing loss caused by either a single incident of trauma or by exposure to hazardous noise in the course of and resulting from employment, the degree of permanent partial disability, if any, shall be determined in accordance with the provisions of this section and awards made in accordance with the provisions of section six of this article.

(b) The percent of permanent partial disability for a monaural hearing loss shall be computed in the following manner:

(1) The measured decibel loss of hearing due to injury at the sound frequencies of five hundred, one thousand, two thousand and three thousand hertz shall be determined for the injured ear and the total shall be divided by four to ascertain the average decibel loss;

(2) The percent of monaural hearing impairment for the injured ear shall be calculated by multiplying by one and six-tenths percent the difference by which the aforementioned average decibel loss exceeds twenty-seven and one-half decibels, up to a maximum of one hundred percent hearing impairment, which maximum is reached at ninety decibels; and

(3) The percent of monaural hearing impairment so obtained shall then be multiplied by twenty-two and one-half to ascertain the degree of permanent partial disability.

(c) The percent of permanent partial disability for a binaural hearing loss shall be computed in the following manner:

(1) The measured decibel loss of hearing due to injury at the sound frequencies of five hundred, one thousand, two thousand and three thousand hertz shall be deter-
mined for each ear and the total for each ear shall be
divided by four to ascertain the average decibel loss for
each ear;

(2) The percent of hearing impairment for each ear
shall be calculated by multiplying by one and six-tenths
percent the difference by which the aforementioned
average decibel loss exceeds twenty-seven and one-half
decibels, up to a maximum of one hundred percent
hearing impairment, which maximum is reached at
ninety decibels;

(3) The percent of binaural hearing impairment shall
then be calculated by multiplying the smaller percen-
tage (better ear) by five, adding this figure to the larger
percentage (poorer ear), and dividing the sum by six;
and

(4) The percent of binaural hearing impairment so
obtained shall then be multiplied by fifty-five to
ascertain the degree of permanent partial disability.

(d) No permanent partial disability benefits shall be
granted for tinnitus, psychogenic hearing loss, recruit-
ment or hearing loss above three thousand hertz.

(e) An additional amount of permanent partial
disability shall be granted for impairment of speech
discrimination, if any. To determine the additional
amount for binaural impairment, the percentage of
speech discrimination in each ear shall be added
together and the result divided by two to calculate the
average percentage of speech discrimination, and the
permanent partial disability shall be ascertained by
reference to the percentage of permanent partial
disability in the table below on the line with the
percentage of speech discrimination so obtained. To
determine the additional amount for monaural impair-
ment, the permanent partial disability shall be ascer-
tained by reference to the percentage of permanent
partial disability in the table below on the line with the
percentage of speech discrimination in the injured ear.
### TABLE

<table>
<thead>
<tr>
<th>% of Speech Discrimination</th>
<th>% of Permanent Partial Disability</th>
</tr>
</thead>
<tbody>
<tr>
<td>90% ... and up to and including ...... 100%</td>
<td>0%</td>
</tr>
<tr>
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<td>1%</td>
</tr>
<tr>
<td>70% ... and up to but not including ...... 80%</td>
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<tr>
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<td>4%</td>
</tr>
<tr>
<td>0% ... and up to but not including ...... 60%</td>
<td>5%</td>
</tr>
</tbody>
</table>

(f) No temporary total disability benefits shall be granted for noise induced hearing loss.

(g) An application for benefits alleging a noise induced hearing loss shall set forth the name of the employer or employers and the time worked for each, and the commissioner shall allocate to and divide any charges resulting from such claim among such employers with whom the claimant sustained exposure to hazardous noise for as much as sixty days during the period of three years immediately preceding the date of last exposure. The allocation shall be based upon the time of exposure with each employer. In determining the allocation, the commissioner shall consider all the time of employment by each employer during which the claimant was so exposed and not just the time within such three-year period, under the same allocation as is applied in occupational pneumoconiosis cases.

(h) The commissioner shall provide, consistent with current practice, for prompt referral of such claims for evaluation, for all medical reimbursement, and for prompt authorization of hearing enhancement devices.

(i) The provisions of this section and the amendments to section six of the article insofar as applicable to permanent partial disabilities for hearing loss shall be operative as to any claim filed after thirty days from the effective date of this section.

§23-4-6c. Benefits payable to certain sheltered workshop employees; limitations.

Notwithstanding the provisions of section six, six-a or six-b of this article or any other provision of this chapter, the minimum weekly benefit payments under subsection (b), section one of this article shall not apply
to employees who work at nonprofit "workshops" as defined in section one, article one, chapter five-a of this code. When compensation is due any such employee, the weekly benefits payable hereunder to such employee may not exceed seventy percent of that employee's actual weekly wages, and in no event may the average weekly wage in West Virginia be the basis upon which to compute the benefits of temporary total disability to 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.

(a) The Legislature hereby finds and declares that injured claimants should receive the type of treatment needed as promptly as possible; that overpayments of temporary total disability benefits with the resultant hardship created by the requirement of repayment should be minimized; and that to achieve these two objectives, it is essential that the commissioner establish and operate a systematic program for the monitoring of injury claims where the disability continues longer than might ordinarily be expected.

(b) In view of the foregoing findings, the commissioner, in consultation with medical experts, shall establish guidelines as to the anticipated period of disability for the various types of injuries. Each injury claim in which temporary total disability continues beyond the anticipated period of disability so established for the injury involved shall be reviewed by the commissioner. If satisfied, after reviewing the medical evidence, that the claimant would not benefit by an independent medical evaluation, the commissioner shall mark the claim file accordingly and shall diary such claim file as to the next date for required review which shall not exceed sixty days. If the commissioner concludes that the claimant might benefit by an independent medical evaluation, he shall proceed as specified in subsections (d) and (e) of this section.
(c) When the authorized treating physician concludes that the claimant has either reached his maximum degree of improvement or is ready for disability evaluation, or when the claimant has returned to work, such authorized treating physician may recommend a permanent partial disability award for residual impairment relating to and resulting from the compensable injury, and the following provisions shall govern and control:

(1) If the authorized treating physician recommends a permanent partial disability award of fifteen percent or less, the commissioner shall enter an award of permanent partial disability benefits based upon such recommendation and all other available information, and the claimant's entitlement to temporary total disability benefits shall cease upon the entry of such award unless previously terminated under the provisions of subsection (e) of this section.

(2) If, however, the authorized treating physician recommends a permanent partial disability award in excess of fifteen percent, or recommends a permanent total disability award, the claimant's entitlement to temporary total disability benefits shall cease upon the receipt by the commissioner of such report and the commissioner shall refer the claimant to a physician or physicians of his selection for independent evaluation prior to the entry of a permanent disability award: Provided, That the claimant shall thereupon receive benefits which shall then be at the permanent partial disability rate as provided in subdivision (e), section six of this article until the entry of a permanent disability award, and which amount of such benefits paid prior to the receipt of such report shall be considered and deemed to be payment of the permanent disability award then granted, if any. In the event that benefits actually paid exceed the amount granted by the permanent partial disability award, claimant shall be entitled to no further benefits by such award but shall not be liable by offset or otherwise for the excess paid.

(d) When the commissioner concludes that an independent medical evaluation is indicated, or that a
claimant may be ready for disability evaluation in accordance with other provisions of this chapter, he shall refer the claimant to a physician or physicians of his selection for examination and evaluation. If the physician or physicians so selected recommend continued, additional or different treatment, the recommendation shall be relayed to the claimant and his then treating physician and the recommended treatment may be authorized by the commissioner.

(e) Notwithstanding any provision in subsection (c) of this section, the commissioner shall enter a notice suspending the payment of temporary total disability benefits but providing a reasonable period of time during which the claimant may submit evidence justifying the continued payment of temporary total disability benefits when:

(1) The physician or physicians selected by the commissioner conclude that the claimant has reached his maximum degree of improvement; or

(2) When the authorized treating physician shall advise the commissioner that the claimant has reached his maximum degree of improvement or that he is ready for disability evaluation and when the authorized treating physician has not made any recommendation with respect to a permanent disability award as provided in subsection (c) of this section; or

(3) When other evidence submitted to the commissioner justifies a finding that the claimant has reached his maximum degree of improvement: Provided, That in all cases a finding by the commissioner that the claimant has reached his maximum degree of improvement shall terminate the claimant's entitlement to temporary total disability benefits regardless of whether the claimant has been released to return to work: Provided, however, That under no circumstances shall a claimant be entitled to receive temporary total disability benefits either beyond the date he is released to return to work or beyond the date he actually returns to work.

In the event that the medical or other evidence indicates that claimant has a permanent disability,
claimant shall thereupon receive benefits which shall then be at the permanent partial disability rate as provided in subdivision (e), section six of this article until entry of a permanent disability award, pursuant to an evaluation by a physician or physicians selected by the commissioner, and which amount of benefits shall be considered and deemed to be payment of the permanent disability award then granted, if any. In the event that benefits actually paid exceed the amount granted under the permanent disability award, claimant shall be entitled to no further benefits by such order but shall not be liable by offset or otherwise for the excess paid.

(f) Notwithstanding the anticipated period of disability established pursuant to the provisions of subsection (b) of this section, whenever in any claim temporary total disability shall continue longer than one hundred twenty days from the date of injury (or from the date of the last preceding examination and evaluation pursuant to the provisions of this subsection or pursuant to the directions of the commissioner under other provisions of this chapter), the commissioner shall refer the claimant to a physician or physicians of his selection for examination and evaluation in accordance with the provisions of subsection (d) of this section and the provisions of subsection (e) shall be fully applicable: Provided, That the requirement of mandatory examinations and evaluations pursuant to the provisions of this subsection (f) shall not apply to any claimant who sustained a brain stem or spinal cord injury with resultant paralysis or an injury which resulted in an amputation necessitating a prosthetic appliance.

(g) The provisions of this section are in addition to and in no way in derogation of the power and authority vested in the commissioner by other provisions of this chapter or vested in the employer to have a claimant examined by a physician or physicians of its selection and at its expense, or vested in the claimant or employer 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.

(a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commissioner, of its findings and conclusions on every medical question in controversy, and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the board shall also return to and file with the commissioner all the evidence as well as all statements under oath, if any, of the persons who appear before it on behalf of the employee or claimant, or employer and also all medical reports and x-ray examinations produced by or on behalf of the employee or claimant, or employer.

(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from his employment for a period of ten years during the fifteen years immediately preceding the date of his last exposure to such hazard and that such claimant or deceased employee has sustained a chronic respiratory disability, then it shall be presumed that such claimant is suffering or such deceased employee was suffering at the time of his death from occupational pneumoconiosis which arose out of and in the course of his employment. This presumption shall not be conclusive.

(c) The findings and conclusions of the board shall set forth, among other things, the following:

(1) Whether or not the claimant or the deceased employee has contracted occupational pneumoconiosis, and if so, the percentage of permanent disability resulting therefrom.

(2) Whether or not the exposure in the employment was sufficient to have caused the claimant's or deceased employee's occupational pneumoconiosis or to have perceptibly aggravated an existing occupational pneumoconiosis, or other occupational disease.

(3) What, if any, physician appeared before the board
on behalf of the claimant or employer, and what, if any, medical evidence was produced by or on behalf of the claimant or employer.

If either party objects to the whole or any part of such findings and conclusions of the board, he shall file with the commissioner, within fifteen days from receipt of such copy to him, unless for good cause shown, the commissioner extends such time, his objections thereto in writing, specifying the particular statements of the board's findings and conclusions to which he objects. The filing of an objection within the time specified is hereby declared to be a condition of the right to litigate such findings and hence jurisdictional. After the time has expired for the filing of objections to the findings and conclusions of the board, the commissioner shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions therein stated. If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof joining in such findings and conclusions shall appear at the time fixed by the commissioner for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing, evidence to support or controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board, and to the taking of testimony of other qualified physicians and roentgenologists.

§23-4-9b. Preexisting impairments not considered in fixing amount of compensation.

Where an employee has a definitely ascertainable impairment resulting from an occupational or a nonoc-
cupational injury, disease, or any other cause, whether or not disabling, and such employee shall thereafter receive an injury in the course of and resulting from his employment, unless such injury results in total perman-
ent disability within the meaning of section one, article
three of this chapter, such impairment, and the effect
thereof, and an aggravation thereof, shall not be taken
into consideration in fixing the amount of compensation
allowed by reason of such injury, and such compensation
shall be awarded only in the amount that would have
been allowable had such employee not had such preex-
isting impairment. Nothing in this section shall be
construed to require that the degree of such preexisting
impairment be definitely ascertained or rated prior to
the injury received in the course of and resulting from
such employee's employment or that benefits must have
been granted or paid for such preexisting impairment.
The degree of such preexisting impairment may be
established at any time by competent medical or other
evidence. Notwithstanding the foregoing provisions of
this section, if such definitely ascertainable preexisting
impairment resulted from an injury or disease pre-
viously held compensable and such impairment had not
been rated, benefits for such impairment shall be
payable to the claimant by or charged to the employer
in whose employ the injury or disease occurred. The
employee shall also receive from the second injury
reserve created by section one, article three of this
chapter the difference, if any, in the benefit rate
applicable in the more recent claim and the prior claim.


To entitle any employee or dependent of a deceased
employee to compensation under this chapter, other than
for occupational pneumoconiosis or other occupational
disease, the application therefor must be made on the
form or forms prescribed by the commissioner and filed
in the office of the commissioner within two years from
and after the injury or death, as the case may be, and
unless so filed within such two-year period, the right to
compensation under this chapter shall be forever
barred, such time limitation being hereby declared to
be a condition of the right and hence jurisdictional, and
all proofs of dependency in fatal cases must likewise be
filed with the commissioner within two years from and
after the death. In case the employee is mentally or
physically incapable of filing such application, it may be
filed by his attorney or by a member of his family.

17 To entitle any employee to compensation for occupa-
tional pneumoconiosis under the provisions hereof, the
application therefor must be made on the form or forms
prescribed by the commissioner and filed in the office
of the commissioner within three years from and after
the last day of the last continuous period of sixty days
or more during which the employee was exposed to the
hazards of occupational pneumoconiosis or within three
years from and after the employee's occupational
pneumoconiosis was made known to him by a physician
or which he should reasonably have known, whichever
shall last occur, and unless so filed within such three-
year period, the right to compensation under this
chapter shall be forever barred, such time limitation
being hereby declared to be a condition of the right and
hence jurisdictional, or, in the case of death, the
application shall be filed as aforesaid by the dependent
of such employee within two years from and after such
employee's death, and such time limitation is a condition
of the right and hence jurisdictional.

To entitle any employee to compensation for occupa-
tional disease other than occupational pneumoconiosis
under the provisions hereof, the application therefor
must be made on the form or forms prescribed by the
commissioner and filed in the office of the commissioner
within three years from and after the day on which the
employee was last exposed to the particular occupational
hazard involved or within three years from and after the
employee's occupational disease was made known to him
by a physician or which he should reasonably have
known, whichever shall last occur, and unless so filed
within such three-year period, the right to compensation
under this chapter shall be forever barred, such time
limitation being hereby declared to be a condition of the
right and hence jurisdictional, or, in case of death, the
application shall be filed as aforesaid by the dependent
of such employee within two years from and after such
employee's death, and such time limitation is a condition
of the right and hence jurisdictional.
§23-4-15b. Determination of nonmedical questions by commissioner; claims for occupational pneumoconiosis; hearing.

If a claim for occupational pneumoconiosis benefits be filed by an employee within three years from and after the last day of the last continuous period of sixty days exposure to the hazards of occupational pneumoconiosis, the commissioner shall determine whether the claimant was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within three years prior to the filing of his claim, whether in the state of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure thereto and whether the claimant was exposed to such hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his last exposure thereto. If a claim for occupational pneumoconiosis benefits be filed by an employee within three years from and after the employee's occupational pneumoconiosis was made known to him by a physician or otherwise should have reasonably been known to him, the commissioner shall determine whether the claimant filed his application within said period and whether in the state of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of last exposure thereto and whether the claimant was exposed to such hazard over a period of not less than ten years during the fifteen years immediately preceding the date of last exposure thereto. If a claim for occupational pneumoconiosis benefits be filed by a dependent of a deceased employee, the commissioner shall determine whether the deceased employee was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within ten years prior to the filing of the claim, whether in the state of West Virginia the deceased employee was exposed to such hazard over a continuous period of not less than two years during the
ten years immediately preceding the date of his last exposure thereto and whether the claimant was exposed to such hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his last exposure thereto. The commissioner shall also determine such other nonmedical facts as may in his opinion be pertinent to a decision on the validity of the claim.

The commissioner shall enter an order with respect to such nonmedical findings within ninety days following receipt by the commissioner of both the claimant's application for occupational pneumoconiosis benefits and the physician's report filed in connection therewith, and shall give each interested party notice in writing of his findings with respect to all such nonmedical facts and such findings and such action of the commissioner shall be final unless the employer, employee, claimant or dependent shall, within fifteen days after receipt of such notice, object to such findings, and unless an objection is filed within such fifteen-day period, such findings shall be forever final, such time limitation being hereby declared to be a condition of the right to litigate such findings and hence jurisdictional. Upon receipt of such objection, the commissioner shall set a hearing as provided in section one, article five of this chapter. In the event of an objection to such findings by the employer, the claim, shall, notwithstanding the fact that one or more hearings may be held with respect to such objection, mature for reference to the occupational pneumoconiosis board with like effect as if the objection had not been filed. If the commissioner concludes after the protest hearings that the claim should be dismissed, a final order of dismissal shall be entered, which final order shall be subject to appeal in accordance with the provisions of section one, article five of this chapter. If the commissioner concludes after such protest hearings that the claim should be referred to the occupational pneumoconiosis board for its review, the order entered shall be interlocutory only and may be appealed only in conjunction with an appeal from a final order with respect to the findings of the occupational pneumoconiosis board.
ARTICLE 5. REVIEW.

§23-5-1. Notice by commissioner of decision; objections and hearing; appeal.

The commissioner shall have full power and authority to hear and determine all questions within his jurisdiction, but upon the making or refusing to make any award, or upon the making of any modification or change with respect to former findings or orders, as provided by section sixteen, article four of this chapter, the commissioner shall give notice, in writing, to the employer, employee, claimant or dependent, as the case may be, of his action, which notice shall state the time allowed for filing an objection to such finding, and such action of the commissioner shall be final unless the employer, employee, claimant or dependent shall, within thirty days after the receipt of such notice, object in writing, to such finding, and unless an objection is filed within such thirty-day period, such finding or action shall be forever final, such time limitation being hereby declared to be a condition of the right to litigate such finding or action and hence jurisdictional. Upon receipt of such objection the commissioner shall, within fifteen days from receipt thereof, set a time and place for the hearing of evidence. Any such hearing may be conducted by the commissioner or his duly authorized representative at the county seat of the county wherein the injury occurred, or at any other place which may be agreed upon by the interested parties, and in the event the interested parties cannot agree, and it appears in the opinion of the commissioner that the ends of justice require the taking of evidence elsewhere, then at such place as the commissioner may direct, having due regard for the convenience of witnesses. Both the employer and claimant shall be notified of such hearing at least ten days in advance, and the hearing shall be held within thirty days after the filing of objection to
the commissioner’s findings as hereinabove provided, unless such hearing be postponed by agreement of the parties or by the commissioner for good cause. The evidence taken at such hearing shall be transcribed and become part of the record of the proceedings, together with the other records thereof in the commissioner’s office. At any time within thirty days after hearing, if the commissioner is of the opinion that the facts have not been adequately developed at such hearing, he may order supplemental hearing upon due notice to the parties. After final hearing the commissioner shall, within thirty days, render his decision affirming, reversing or modifying, his former action, which shall be final: Provided, That the claimant or the employer may apply to the appeal board herein created for a review of such decision; but no appeal or review shall lie unless application therefor be made within thirty days of receipt of notice of the commissioner’s final action, or in any event within sixty days of the date of such final action, regardless of notice, and unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right to such appeal or review and hence jurisdictional.

After protest by the employer only to any finding or determination of the commissioner made on or after July one, one thousand nine hundred seventy-one, and the employer does not prevail in its protest and, in the event the claimant is required to attend a hearing by subpoena or agreement of counsel or at the express direction of the commissioner, then such claimant in addition to reasonable traveling and other expenses shall be reimbursed for loss of wages incurred by him in attending such hearing.

§23-5-1b. Refusal to reopen claim; notice; objection.

If, however, in any case in which application for further adjustment of a claim is filed under the next preceding section, it shall appear to the commissioner that such application fails to disclose a progression or aggravation in the claimant’s condition, or some other
fact or facts which were not theretofore considered by
the commissioner in his former findings, and which
would entitle such claimant to greater benefits than he
has already received, the commissioner shall, within
sixty days from the receipt of such application, notify
the claimant and the employer that such application
fails to establish a prima facie cause for reopening the
claim. Such notice shall be in writing stating the reasons
for denial and the time allowed for objection to such
decision of the commissioner. The claimant may, within
thirty days after receipt of such notice, object in writing
to such finding and unless the objection is filed within
such thirty-day period, no such objection shall be
allowed, such time limitation being hereby declared to
be a condition of the right to such objection and hence
jurisdictional. Upon receipt of an objection, the commis-
sioner shall afford the claimant an evidentiary hearing
as provided in section one of this article.

§23-5-1d. Refusal of modification; notice; objection.

If in any such case it shall appear to the commissioner
that such application fails to disclose some fact or facts
which were not theretofore considered by the commis-
sioner in his former findings, and which would entitle
such employer to any modification of said previous
award, the commissioner shall, within sixty days from
the receipt of such application, notify the claimant and
employer that such application fails to establish a just
cause for modification of said award. Such notice shall
be in writing stating the reasons for denial and the time
allowed for objection to such decision of the commis-
sioner. The employer may, within thirty days after
receipt of said notice, object in writing to such decision,
and unless the objection is filed within such thirty-day
period, no such objection shall be allowed, such time
limitation being hereby declared to be a condition of the
right to such objection and hence jurisdictional. Upon
receipt of such objection, the commissioner shall afford
the employer an evidentiary hearing as provided in
section one of this article.

§23-5-1e. Time periods for objections and appeals;
extensions.
Notwithstanding the fact that the time periods set forth for objections, protests, and appeals to or from the workers' compensation appeal board, are jurisdictional, such periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of such time period showing good cause or excusable neglect, accompanied by the objection, protest, or appeal petition. In exercising such discretion the commissioner, appeal board, or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.

§23-5-3. Appeal to board; procedure; remand and supplemental hearing.

Any employer, employee, claimant, or dependent, who shall feel aggrieved at any final action of the commissioner taken after a hearing held in accordance with the provisions of section one of this article, shall have the right to appeal to the board created in section two of this article for a review of such action. The aggrieved party shall file a written notice of appeal with the compensation commissioner, directed to such board, within thirty days after receipt of notice of the action complained of, or in any event, regardless of notice, within sixty days after the date of the action complained of, and unless the notice of appeal is filed within the time specified, no such appeal shall be allowed, such time limitation being hereby declared to be a condition of the right to such appeal and hence jurisdictional; and the commissioner shall notify the other party immediately upon the filing of a notice of appeal. The commissioner shall forthwith make up a transcript of the proceedings before him and certify and transmit the same to the board. In such certificate, he shall incorporate a brief recital of the proceedings therein had and recite each order entered and the date thereof. The board shall review the action of the commissioner complained of at its next meeting after the filing of notice of appeal, provided such notice of appeal shall have been filed thirty days before such meeting of the
board, unless such review be postponed by agreement of parties or by the board for good cause. The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof, and briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. And thereupon, after a review of the case, the board shall sustain the finding of the commissioner or enter such order or make such award as the commissioner should have made, stating in writing its reasons therefor, and shall thereupon certify the same to the commissioner, who shall proceed in accordance therewith. Or, instead of affirming or reversing the commissioner as aforesaid, the board may, upon motion of either party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the commissioner for the taking of such new, additional or further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event the board shall remand the case to the commissioner for the taking of further evidence therein, the commissioner shall proceed to take such new, additional or further evidence in accordance with any instruction given by the board, and shall take the same within thirty days after receipt of the order remanding the case, giving to the interested parties at least ten days' written notice of such supplemental hearing, unless the taking of evidence shall be postponed by agreement of parties, or by the commissioner for good cause. After the completion of such supplemental hearing, the commissioner shall, within sixty days, render his decision affirming, reversing or modifying his former action, which decision shall be appealable to, and proceeded with by the appeal board in like manner as in the first instance. The board may remand any case as often as in its opinion is necessary for a full development and just decision of the case. The board may take evidence or consider ex parte statements furnished in support of any motion to remand the case to the commissioner. All evidence taken by or filed with the board shall become a part of the record. All appeals from the action of the commissioner
shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record. In all proceedings before the board, either party may be represented by counsel.

§23-5-4. Appeals from final decisions of board to supreme court of appeals; procedures; costs.

From any final decision of the board, including any order of remand, an application for review may be prosecuted by either party, or by the commissioner, to the supreme court of appeals within thirty days from the date thereof by the filing of a petition therefor to such court against the board and the adverse party (claimant or employer, as the case may be) as respondents, and unless the petition for review is filed within such thirty-day period, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right to such appeal or review and hence jurisdictional; and the clerk of such court shall notify each of the respondents and the commissioner of the filing of such petition. The board shall, within ten days after receipt of such notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. And if granted to a nonresident of this state, he shall be required to execute and file with the clerk before such order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him thereon. The board may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of the court on the certified question, or until notice that the court has declined to docket the same. If a review be granted or the certified question be docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the commissioner, of that fact by mail. If a review be granted or the certified question docketed, the case shall be heard by the court
in the same manner as in other cases, except that neither the record nor briefs need be printed. Every such review granted or certified question docketed prior to thirty days before the beginning of the term, shall be placed upon the docket for such term. The attorney general shall, without extra compensation, represent the board in such cases. The court shall determine the matter so brought before it and certify its decision to the board and to the commissioner. The cost of such proceedings on petition, including a reasonable attorney’s fee, not exceeding thirty dollars to the claimant’s attorney, shall be fixed by the court and taxed against the employer if the latter be unsuccessful, and if the claimant, or the commissioner (in case the latter be the applicant for review) be unsuccessful, such costs, not including attorney’s fees, shall be taxed against the commissioner, payable out of any funds available in his hands, or shall be taxed against the claimant, in the discretion of the court. But there shall be no cost taxed 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.

The commissioner shall establish and alter from time to time as he may determine to be appropriate a schedule of the maximum reasonable amounts to be paid to physicians, surgeons, hospitals or other persons, firms or corporations for the rendering of treatment to injured employees under this chapter. The commissioner also, on the first day of each regular session, and also from time to time, as the commissioner may consider appropriate, shall submit the schedule, with any changes thereto, to the Legislature.

The commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

(a) Such sums for medicines, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices, as may be reasonably required.

(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices authorized under subdivision (a) hereof may be made to the injured employee, or to the person, firm or corporation who or which has rendered such treatment or furnished any of the items specified above, or who has advanced payment for same, as the commissioner may deem proper, but no such payments or disbursements shall be made or awarded by him unless duly verified statements on forms prescribed by the commissioner shall be filed with the commissioner within two years after the cessation of such treatment or the delivery of such appliances: Provided, That no payment hereunder shall be made unless such verified statement shows no charge for or with respect to such treatment or for or with respect to any of the items specified above.
has been or will be made against the injured employee
or any other person, firm or corporation, and when an
employee covered under the provisions of this chapter
is injured in the course of and as a result of his employ-
ment and is accepted for medical, surgical, dental or
hospital treatment, the person, firm or corporation ren-
dering such treatment is hereby prohibited from making
any charge or charges therefor or with respect thereto
against the injured employee or any other person, firm or
corporation which would result in a total charge for the
treatment rendered in excess of the maximum amount
set forth therefor in the commissioner's schedule estab-
lished as aforesaid.

(c) No employer shall enter into any contracts with
any hospital, its physicians, officers, agents or employees
to render medical, dental or hospital service or to give
medical or surgical attention therein to any employee for
injury compensable within the purview of this chapter,
and no employer shall permit or require any employee
to contribute, directly or indirectly, to any fund for the
payment of such medical, surgical, dental or hospital
service within such hospital for such compensable injury.
Any employer violating this section shall be liable in
damages to his employees as provided in section eight,
article two of this chapter, and any employer or hospital
or agent or employee thereof violating the provisions of
this section shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be sentenced to pay a fine not
exceeding one thousand dollars or undergo imprisonment
not exceeding one year, or both.

(d) When an injury has been reported to the commis-
sioner by the employer without protest, the commissioner
may pay, or order an employer who or which made the
election and who or which received the permission men-
tioned in section nine, article two of this chapter to pay,
within the maximum amount provided by schedule
established by the commissioner as aforesaid, bills for
medical or hospital services without requiring the injured
employee to file an application for benefits.

(e) The commissioner shall provide for the replace-
ment of artificial limbs, crutches, hearing aids, eyeglasses and all other mechanical appliances provided in accordance with this section which later wear out, or which later need to be refitted because of the progression of the injury which caused the same to be originally furnished, or which are broken in the course of and as a result of the employee’s employment. The fund or self-insured employer shall pay for these devices, when needed, notwithstanding 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 development is necessary for the economic welfare of the people of Berkeley County. Accordingly, the Legislature hereby finds and declares that the transfer of land belonging to Berkeley County to the Berkeley County Development Authority is in furtherance of such development and promotes the general welfare of the public and, therefore, is a public purpose.

9 The county commission of Berkeley County is hereby authorized and empowered to transfer and convey unto the Berkeley County Development Authority all that certain tract or parcel of land situate in Opequon District of Berkeley County, West Virginia, and being all of what
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
forty-five, as amended, is hereby authorized and empowered to apply under the general laws of the state of West Virginia to create a private nonprofit corporation and to perform all necessary acts in connection therewith, including, but not limited to, seeking tax exempt status for said private nonprofit corporation and to applying for and securing any necessary licenses, certificates of need, franchises, or other governmental approvals needed to do 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.

Inasmuch as the county commission of Cabell County, West Virginia, and the city council of the city of Huntington, West Virginia, hold title to the assets of Cabell county general hospital by virtue of chapter one hundred fifty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-five, and said county commission of Cabell County, West Virginia, and said city council are desirous of transferring title to said assets to the private nonprofit corporation to be formed by the board of trustees of Cabell county general hospital in order to enable said hospital to serve more fully the health care needs of said city and county and inasmuch as a disposition of said assets by public auction would be impracticable and the objectives might not be accomplished by sale at auction, said county commission of Cabell County, and said city council of Huntington are hereby authorized and empowered to transfer any and all of their respective rights, titles and interests to all of the assets, tangible and intangible, real, personal and mixed, and wheresoever located, of Cabell county general hospital to the private nonprofit corporation to be formed by said board of trustees, (including specifically that certain tract or parcel of land situate in the city of Huntington, Cabell County, West Virginia, which was conveyed unto the county court of Cabell County by Emma H. Darnall, unmarried, and others, by deed dated the twenty-eighth day of June, one thousand nine hundred forty-three, and recorded in the office of the 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
county general hospital that the property shall be held by
the private nonprofit corporation for the purpose of the
construction, operation and maintenance of a general
hospital and for related health care operations and for no
other purpose and may provide that upon default and
failure of such condition that title to said real property shall
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.

Inasmuch as the board of trustees of the Cabell county
general hospital is authorized to create a private nonprofit
corporation by recourse to the general laws of the state of
West Virginia and intends to create such corporation, and
inasmuch as said city council and said county commission
are authorized to transfer the assets of said Cabell county
general hospital to said nonprofit corporation and the
execution of said agreement between said city council and
said county commission and said nonprofit corporation and
the performance of all necessary acts and the occurrence of
all necessary conditions for the transfer of assets to said
nonprofit corporation, shall cease and determine and
henceforth and thereafter be dissolved and from that time
chapter one hundred fifty-seven, acts of the Legislature,
regular session, one thousand nine hundred forty-five, as
amended, shall stand repealed and be of no more force or
effect.

Should the authorized transfer not occur within two
years of the effective date of this act, this act shall cease and
determine and be of no further force or effect.

§4. Severability.

If any of the provisions of this act are held invalid, such
invalidation shall not affect other provisions which can be
given effect without the invalid provision and to this end
the provisions of this act are declared to be severable.

§5. Effective date.

Except where this legislation is expressly stated to
operate prospectively, the act shall become effective
immediately upon signing by the governor or upon its
becoming a law without his signature.
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 levy body for election to continue additional levy for fire protection services and equipment.

1 Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Lincoln County is hereby authorized to extend the time for its meeting as a levy body and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred eighty-six, for the purpose of submitting to the voters of Lincoln County the extension of the additional county levy for fire protection services and equipment in Lincoln County which was approved by the voters at the general election held on the second day of November, one thousand nine hundred eighty-two.
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.

(a) The authority consists of six voting members and six ex officio nonvoting members. All members shall be appointed before the first day of July, one thousand nine hundred eighty-five.

(b) Three voting members shall be appointed by the Raleigh County commission. Three voting members shall be appointed by the Summers County commission. No more than two of the three voting members appointed by a county commission may be members of the same political party. The terms of the voting members initially appointed by a county commission are as follows: One member shall be appointed for a term of one year, one member shall be appointed for a term of two years and one member shall be appointed for a term of three years. All successive appointments shall be for a term of four years. Any voting member may be removed for cause by the appointing county commission.

(c) The six ex officio nonvoting members are the commissioner of highways or his designee, the director
of natural resources or his designee, the commissioner of agriculture or his designee, the commissioner of commerce or his designee, and, if they choose to serve after being invited to do so by the county commissions of Raleigh and Summers Counties, the district engineer of the United States Army Corps of Engineers or his designee and the supervisor of the New River gorge national river office or his designee. If either or both of the latter two decline to serve, then the county commissions of Raleigh and Summers Counties shall each appoint one nonvoting member. All terms of ex officio nonvoting members are for four years.

(d) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All members are eligible for reappointment.

(e) There shall be an annual meeting of the authority on the second Monday in July in each year and a monthly meeting on a day and at such time as the authority may designate in its bylaws. A special meeting may be called by the president, the secretary or any two members of the authority and may be held only after all members are given notice thereof in writing. Three members constitute a quorum for all meetings. At each annual meeting of the authority, it shall elect a president, vice president, secretary and treasurer. The authority shall adopt such bylaws, rules and regulations as are necessary for its own operation and management.

The authority has all but only those powers necessary, incidental, convenient and advisable for the following purposes:

(1) The preparation of a plan or plans for the New River parkway;

(2) Advocating actions consistent with that plan or its provisions to or before any governmental entity or any private person or entity; and

(3) Otherwise acting in an advisory capacity with regard to any aspects of the New River parkway upon or without request to any governmental entity or private person or entity. The authority may not own any of the...
real estate or real property herein described for
development and may not be responsible for operating
or maintaining the parkway.

Each voting member of the authority shall be compensated monthly by the governing bodies which appointed
such members in an amount to be fixed by such
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 deplores 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.

[1313]
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)

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 Subdivisions
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, entomology 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.

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**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 amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-six, which proposed amendment is that section three, article nine thereof, be repealed.
Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 4 or as to be determined by the Secretary of State" and designated as the "Repeal of the Limitation on Sheriff's Succession Amendment," and the purpose of the proposed amendment is summarized as follows: "To repeal section three, article nine of the State Constitution which provided that a person who had been elected or who had served as sheriff for all or part of two consecutive terms was ineligible for the office of sheriff for the term following the second of the two consecutive terms."

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
RESOLUTIONS

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 collection of an additional sales tax of one percent to be paid to the state road fund and dedicated to the purposes of such fund as appropriated by the Legislature to construct, reconstruct, upgrade and renovate highways and bridges throughout West Virginia to promote economic development; to facilitate industrial access; and to improve the highway network.

2 The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding the aggregate principal amount of five hundred million dollars, and with no more than seventy-five million dollars of such aggregate principal amount to be issued or sold in any fiscal year. After initial issuance of the aggregate principal amount of five hundred million dollars of bonds, and to the extent that through retirement of such bonds initially authorized the amount of principal outstanding is less than two hundred fifty million dollars in the aggregate principal amount, then additional bonds are authorized to be issued, but the principal amount of such bonds, together with the principal amount of those still outstanding at such time, shall not at any one time exceed two hundred fifty million dollars in the aggregate principal amount, nor shall issuance of additional bonds in any one fiscal year exceed the principal amount of seventy-five million dollars. The purpose of these bonds shall be to construct, reconstruct, upgrade and renovate highways and bridges throughout West Virginia to promote economic development; to facilitate industrial access; and to improve the highway network.

3 The Legislature shall have power to authorize the issuing and selling of state bonds to refund any bonds issued and sold as aforesaid: Provided, That the actuarially determined present value of the debt service on the refunding bonds is less than that of the bonds being re-funded.
Whenever the Legislature shall provide for the issuance of bonds under the authority of this amendment, it shall provide that the additional sales tax of one percent authorized by this amendment to be levied, collected and dedicated to the state road fund shall first be pledged to pay annually the interest on such bonds and the principal thereof within and not exceeding twenty years or such shorter term of years as prescribed by the Legislature, notwithstanding the provisions of article ten, section four of the Constitution of West Virginia. To the extent such additional sales tax collected and dedicated to the state road fund in any year exceeds the amount necessary to pay the debt service accruing on any and all outstanding bonds issued under authority of this amendment, such excess moneys shall be used for the purposes of the state road fund as appropriated by the Legislature. All brokerage fees along with all legal fees incurred as a result of this bond offering shall be bid out on a competitive bid basis to those brokerage houses and nationally recognized bond counsel with offices in West Virginia.

Further resolved, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 5 or as to be determined by the Secretary of State" and designated as the "Highway Improvement and Bridge Amendment" and the purpose of the proposed amendment is summarized as follows: "To provide for the levy and collection of an additional sales tax of one percent to be paid to the state road fund and dedicated to the purposes of such fund as appropriated by the Legislature to construct, reconstruct, upgrade and renovate highways and bridges throughout West Virginia to promote economic development; to facilitate industrial access; and to improve the highway network; and to empower the Legislature to authorize the issuing and selling of state bonds the proceeds of which shall be used to construct, reconstruct, upgrade and renovate highways and bridges throughout West Virginia to promote economic development, facilitate industrial access and im-
prove the highway network. These bonds shall not exceed the aggregate principal amount of five hundred million dollars initial issuance, with issuance of additional bonds being offered whenever, through retirement, the principal amount of bonds outstanding will not exceed two hundred fifty million dollars in the aggregate; and with no more than the principal amount of seventy-five million dollars of bonds to be issued in any fiscal year. The additional sales tax of one percent shall be levied, collected and dedicated to pay the interest on and principal of such bonds, and any excess funds so collected and dedicated shall be used for the purposes of the state road fund as appropriated by the Legislature. All brokerage fees along with all legal fees incurred as a result of this bond offering shall be bid out on a competitive bid basis to those brokerage houses and nationally recognized bond counsel with offices in West Virginia.”
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
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:

**TITLE 2. APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**EDUCATIONAL**

35—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

Acct. No. 2950

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<td>Other Current Expenses</td>
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<td>Programs</td>
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<td>Basic Foundation</td>
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<td>Allowances</td>
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The purpose of this supplementary appropriation bill is to supplement, amend and adjust sums in respect to various line items in connection with the salary increases and related charges provided by the Legislature at first extraordinary session, 1986; such amounts to be available for expenditure in fiscal year 1986-87.
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
The purpose of this supplementary appropriation bill is to provide additional funds and supplement the above item for summer school program purposes with such additional amount being available for expenditure in 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:

6 1 Personal Services ............... $750,000

6 1 Personal Services ............... $750,000
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BOARDS AND COMMISSIONS

86—Insurance Commissioner
(WV Code Chapter 33)

Acct. No. 6160

2 Annual Increment..................................... $ 3,744

The purpose of this supplementary appropriation bill is to provide additional funds for annual increment purposes of the insurance commissioner, with such additional amount being available for expenditure in 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
(WV Code Chapter 33)

4 Acct. No. 8016-21

6 TO BE PAID FROM SPECIAL REVENUE FUND
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—Public Service Commission
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
The total amount of this appropriation shall be paid from special revenue fund out of collections for special license fees from public service corporations as provided by law. Any unexpended balance remaining in the appropriation for "Headquarters Building Development" at the close of fiscal year 1985-86 is hereby reappropriated for expenditure during fiscal year 1986-87.

The purpose of this supplementary appropriation bill is to supplement the Public Service Commission appropriation to provide funds for certain new duties and responsibilities as set forth in Enrolled Senate Bill No. 191, enacted at regular 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:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

FISCAL

18—State Tax Department

(WV Code Chapter 11)

Acct. No. 1800

10 Reimbursement to
11 Twenty-nine Counties
12 for loss of Tax Revenue
13 Due to 1985 Flood ............. $_____ $--0--
14 Total .................... $_____ $17,835,767

The purpose of this supplementary appropriation is to supplement, amend and cause to expire from the designated item ten in this account and back into the state fund, general revenue of the state, the sum of $800,000 to be thereafter available for other and further 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.

Sec. 14. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the state municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the state municipal bond commission because of the failure of any state agency for either general obligations or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the state municipal bond commission as may be necessary for these purposes.

The state municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

The purpose of this supplementary appropriation bill is to supplement, amend and make technical correction of such section by reinserting therein certain standard language of appropriation omitted therefrom and which permits funding of deficiencies which might arise in respect of local taxing district general obligation bonds to be paid with moneys advanced from the appropriations under this section, and with any such advances being required to be repaid thereafter, with interest, by such local taxing district from its first collections; all in support of timely payment of obligations, prevention of any default, and maintenance of credit standing and rating.
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:

<table>
<thead>
<tr>
<th>TITLE 2. APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 6. Supplemental and deficiency appropriation.</td>
</tr>
<tr>
<td>FISCAL</td>
</tr>
<tr>
<td>126—State Tax Department</td>
</tr>
<tr>
<td>Acct. No. 1800</td>
</tr>
<tr>
<td>3 Reimbursement to Counties and Levying Bodies for Loss of Tax Revenue Due to 1985 Flood</td>
</tr>
</tbody>
</table>

The tax commissioner is hereby authorized and directed to disburse to any county government or levying body moneys from the appropriation above,
being item three thereof, to reimburse such county
government or levying body for property tax revenue
losses resulting from or due to the 1985 flood in such
amounts as he may determine to be tax revenue losses
in the fiscal year 1985-86 or the fiscal year 1986-87
resulting from or due to the 1985 flood.

The tax commissioner is further hereby authorized
and directed to disburse money as aforesaid to counties
or levying bodies suffering losses of tax revenue derived
from apportionment of tax revenues from public utilities
assessed by the tax commissioner or the board of public
works, resulting from or due to the 1985 flood, notwith-
standing that such counties or levying bodies suffering
such losses may not be among or located in the 29
counties included within the declared federal disaster
area or areas.

Any unexpended balance remaining in the aforesaid
appropriation balance at the close of the fiscal year
1985-86 is reappropriated for expenditure during the
fiscal year 1986-87.

The purpose of this supplementary appropriation bill
is to supplement, amend, redesignate an item, being
item 3 of such appropriation, and add language of
appropriation under such account to permit expenditure
of the sum of $800,000 for reimbursement to the 29 flood
disaster counties and to counties whose property tax
revenue losses were directly due to such disaster
through apportionment of its revenues in respect of
public utility assessments by the tax commissioner or
the board of public works, even though such county may
not have been actually flooded; both in respect of
property tax revenue reimbursements for the fiscal year
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 education.
3 (2) “Division” means the division of vocational rehabilitation established by this article.
4 (3) “Director” means the director of the division of vocational rehabilitation.
5 (4) “Employment handicap” means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in, an obstruction to occupational performance.
6 (5) “Disabled individual” means any person who has a substantial employment handicap.
7 (6) “Vocational rehabilitation” and “vocational rehabilitation services” means any services, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his employment handicap and to enable him to engage in a remunerative occupation including,
but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, attendant care services, physical restoration, transportation, occupational licenses, occupational tools and equipment, including motor vehicles, maintenance, and training books and materials.

(7) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap including, but not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(8) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care not to exceed ninety days, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.

(9) "Prosthetic appliance" means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(10) "Occupational licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(11) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(12) "Regulations" means regulations made by the director with the approval of the state board.

(13) "Attendant care evaluation unit" means any agency certified by the division of vocational rehabilitation that employs a qualified evaluator to provide
evaluations and attendant referrals such as the centers
for independent living, the West Virginia rehabilitation
center and any other unit approved by the division.

(14) “Attendant care services” means services which
include, but are not limited to:
(a) Routine bodily functions such as bowel and bladder
care;
(b) Dressing;
(c) Ambulation;
(d) Meal preparation and consumption;
(e) Assistance in moving in and out of bed;
(f) Bathing and grooming;
(g) Housecleaning and laundry; and
(h) Any other similar activity of daily living.

(15) “Attendant” means a self-employed individual
who is trained to perform attendant care services and
who works as an independent contractor.

§18-10A-4a. Attendant care services.

The purpose of this section is to declare the intent of
the state to enable severely physically disabled adults to
enter or continue in the workforce, to enhance the
opportunities for disabled individuals to participate
fully in society through self-fulfillment and economic
independence.

The state board, through the division, shall administer
the provision of attendant care services as a separate
and distinct program to any severely physically disabled
adult who is present in the state at the time of filing
their application. The division may administer the
program or may enter into a contract with a private or
public organization to administer and operate the
program. If the program is administered by the
division, the funds shall be used as payments for
attendant care services, evaluations, attendant manage-
ment training and administrative costs. If the division
enters into a contract with a private or public organ-
ization, the private or public organization may use the funds as payments for attendant care services, evaluations, attendant management training and for reasonable administrative costs. The administrative costs allowed under the contract shall be negotiated and approved by the director. The division shall establish a waiting list of eligible disabled individuals if sufficient funds are not available under the program. Determination will be made by a certified evaluation unit that such adult needs fourteen or more hours of attendant care per week: Provided, That the severely physically disabled adult is eighteen years of age or older, is employed or will be ready for employment within six months of the time application for services is made and has a total income of no more than thirty thousand dollars annually. The maximum income allowable will be recalculated each year based on changes in the consumer price index. The eligible adult shall be reevaluated by a certified evaluation unit at the direction of the division at least once every two years to determine their continuing need for attendant care services. The eligible adult is responsible for hiring, firing and supervising his or her attendant. Any subsidy received under the provisions of this section for the purpose of providing attendant care services shall not be considered income to the severely disabled person for any purpose to the extent permitted by federal law and regulations (IRS Act of 1954) but shall supplement any other aid for which the adult is eligible.

The division is responsible for accepting applications for attendant care services from severely physically disabled adults and making determinations of eligibility. The division shall provide for certifying evaluation units and shall make determination regarding certification for each evaluation unit which makes application.

The cost of evaluation fees, training of both attendants and eligible adults in the management of attendants and provision of attendant care services shall be borne by the division from funds allocated for this program.

The division shall acquire from a certified evaluation unit an evaluation of the attendant care needs for each
applicant. Within thirty days of the time that any application for attendant care services is filed, the applicant shall be notified that arrangements have been made for the applicant to be evaluated by a certified evaluation unit. Based upon the evaluator’s information, the division shall develop a plan for each eligible applicant that shall include the amount of attendant care time needed per week and an estimate of the length of time the attendant care services will be needed. Notice shall be given to the applicant and the evaluator as soon as a decision has been made regarding the eligibility of each applicant. If the recommendations of the certified evaluation unit are not followed, the division shall include the reasons for reaching its decision in the notice sent to the applicant and evaluator.

The division shall promulgate policies and procedures for the administration of this program. The division shall adopt rules and regulations for full fiscal accountability for all appropriated funds and financial assistance shall be given in accordance with a sliding payment scale established by the division. The division shall also establish a consumer advisory committee for the purpose of advising on policies and procedures and related matters involved in administration of the program.

The division shall be responsible for establishing an appeals procedure for those applicants who have been denied attendant care services and for informing all applicants of their right to appeal a decision of the 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.]
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
61. Crimes and Their Punishment.

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.

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 agency intending to act as a child welfare agency shall apply for a license or approval to operate child care facilities regulated by this article. Applications for license or approval shall be made separately for each child care facility to be licensed or approved.

7. The commissioner may prescribe forms and reasonable application procedures. Before issuing a license or approval, the commissioner shall investigate the facility, program and persons responsible for the care of children. The investigation shall also include, but not be limited to, review of resource need, reputation, character and purposes of applicants, a check of personnel medical records, the financial records of applicants, and
consideration of the proposed plan for child care from intake to discharge. The investigation shall also include a check into the child abuse and neglect records of the department relevant to the applicant and the criminal conviction records of the department of public safety to determine if any applicant and any of the employees of the facility have a child abuse, child neglect or criminal conviction record of causing harm to another person.

The commissioner shall make a decision on each application within sixty days of its receipt and shall provide to unsuccessful applicants written reasons for 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.

The state department shall establish or designate in every county a local child protective service to perform the duties and functions set forth in this article.

Except in cases involving institutional abuse or cases in which police investigation also appears appropriate, the child protective service shall be the sole public agency responsible for receiving, investigating or arranging for investigation and coordinating the investigation of all reports of child abuse or neglect: Provided, That under no circumstances shall investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. The local child protective service shall be organized to maximize the continuity of responsibility, care and service of individual workers for individual children and families.

Each local child protective service shall:

(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
31 (2) Provide or arrange for emergency children's
32 services to be available at all times; and
33
34 (3) Within twenty-four hours of notification of sus-
35 pected child abuse or neglect, commence or cause to be
36 commenced a thorough investigation of the report and
37 the child's environment.
38
39 In those cases in which the local child protective
40 service determines that the best interests of the child
41 require court action, the local child protective service
42 shall initiate the appropriate legal proceeding.
43
44 The local child protective service shall be responsible
45 for providing, directing or coordinating the appropriate
46 and timely delivery of services to any child suspected or
47 known to be abused or neglected, including services to
48 the child's family and those responsible for the child's
49 care.
50
51 To carry out the purposes of this article, all depart-
52 ments, boards, bureaus and other agencies of the state
53 or any of its political subdivisions and all agencies
54 providing services under the local child protective
55 service plan, shall, upon request, provide to the local
56 child protective service such assistance and information
57 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-
dian or to be habitually absent from school without just cause, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, or imprisoned in the county jail for a period not exceeding one year, or both fined and imprisoned.

In addition to any penalty provided under this section and any restitution which may be ordered by the court under article eleven-a of chapter sixty-one, the court may order any person convicted under the provisions of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the child resulting from the act or acts for which the person is convicted, whether or not the child is considered to 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.

§61-8-6. Detention of person in place of prostitution; penalty.

1 Whoever shall by any means keep, hold, detain or restrain any person in a house of prostitution or other place where prostitution is practiced or allowed; or whoever shall, directly or indirectly, keep, hold, detain or restrain, or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any
debt, dues or obligations incurred or said to have been incurred by such person shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than one hundred nor more than five hundred dollars, and, upon conviction for any subsequent offense under this section, shall be punished by imprisonment in the penitentiary for not less than one nor more than three years: Provided, That in any offense under this section where the person so kept, held, detained or restrained is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than two years nor more than five years or fined not more than five thousand dollars, or both.

§61-8-7. Procuring for house of prostitution; penalty; venue; competency as witness; marriage no defense.

Any person who shall procure an inmate for a house of prostitution, or who, by promises, threats, violence, or by any device or scheme, shall cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a person; or any person who shall, by promises, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or any person who shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into or leave this state for the purpose of prostitution, or who shall procure any person to become an inmate of a house of ill fame within this state or to come into or leave this state for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this state,
or to come into or leave this state for the purpose of
prostitution, shall be guilty of pandering, and, upon a
first conviction for an offense under this section, shall
be punished by imprisonment in the county jail for a
period of not less than six months nor more than one
year, and by a fine of not less than one hundred nor
more than five hundred dollars, and, upon conviction for
any subsequent offense under this section, shall be
punished by imprisonment in the penitentiary for a
period of not less than one nor more than five years:
Provided, That where the inmate referred to in this
section is a minor, any person violating the provisions
of this section shall be guilty of a felony, and, upon
conviction, shall be confined in the penitentiary not less
than two years nor more than five years or fined not
more than five thousand dollars, or both.

It shall not be a defense to prosecution for any of the
acts prohibited in this section that any part of such act
or acts shall have been committed outside of this state,
and the offense shall in such case be deemed and alleged
to have been committed and the offender tried and
punished in any county in which the prostitution was
intended to be practiced, or in which the offense was
consummated, or any overt act in furtherance of the
offense was committed.

Any such person shall be a competent witness in any
prosecution under this section to testify for or against
the accused as to any transaction, or as to conversation
with the accused, or by the accused with another person
or persons in his or her presence, notwithstanding his
or her having married the accused before or after the
violation of any of the provisions of this section, whether
called as a witness during the existence of the marriage
or after its dissolution. The act or state of marriage shall
not be a defense to any violation of this section.

§61-8-8. Receiving support from prostitution; pimping;
penalty; prostitute may testify.

Any person who, knowing another person to be a
prostitute, shall live or derive support or maintenance,
in whole or in part, from the earnings or proceeds of
the prostitution of such prostitute, or from money loaned
or advanced to or charged against such prostitution by
any keeper or manager or inmate of a house or other
place where prostitution is practiced or allowed, or shall
tout or receive compensation for touting for such
prostitution, shall be guilty of pimping, and, upon the
first conviction for such offense, shall be punished by
imprisonment in the county jail for a period of not less
than six months nor more than one year, and by a fine
of not less than one hundred nor more than five hundred
dollars, and, upon a conviction for any subsequent
offense hereunder, shall be punished by imprisonment
in the penitentiary for a period of not less than one nor
more than three years: Provided, That where the
prostitute referred to in this section is a minor, any
person violating the provisions of this section shall be
guilty of a felony, and, upon conviction, shall be confined
in the penitentiary not less than two years or fined not
more than five thousand dollars, or both. A prostitute
shall be a competent witness in any prosecution
hereunder to testify for or against the accused as to any
transaction or conversation with the accused, or by the
accused with another person or persons in the presence
of the prostitute, even if the prostitute may have
married the accused before or after the violation of any
of the provisions of this section, whether called as a
witness during the existence of the marriage or after its
dissolution.

§61-8-12. Incest; penalty.

(a) For the purposes of this section:

(1) “Aunt” means the sister of a person’s mother or
father;

(2) “Brother” means the son of a person’s mother or
father;

(3) “Daughter” means a person’s natural daughter,
adoptive daughter or the daughter of a person’s husband
or wife;

(4) “Father” means a person’s natural father, adoptive
father or the husband of a person’s mother;
(5) "Granddaughter" means the daughter of a person's son or daughter;
(6) "Grandfather" means the father of a person's father or mother;
(7) "Grandmother" means the mother of a person's father or mother;
(8) "Grandson" means the son of a person's son or daughter;
(9) "Mother" means a person's natural mother, adoptive mother or the wife of a person's father;
(10) "Niece" means the daughter of a person's brother or sister;
(11) "Nephew" means the son of a person's brother or sister;
(12) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person;
(13) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party;
(14) "Sister" means the daughter of a person's father or mother;
(15) "Son" means a person's natural son, adoptive son or the son of a person's husband or wife;
(16) "Uncle" means the brother of a person's father or mother.
(b) A person is guilty of incest when such person engages in sexual intercourse or sexual intrusion with his or her father, mother, brother, sister, daughter, son, grandfather, grandmother, grandson, granddaughter, nephew, niece, uncle or aunt.
(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five years nor more than ten years, or fined not more than five thousand dollars and imprisoned in the penitentiary not less than five years nor more than ten years.

(d) In addition to any penalty provided under this section and any restitution which may be ordered by the court under article eleven-a of this chapter, the court may order any person convicted under the provisions of this section where the victim is a minor, to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.

§61-8-13. Incest; limits on interviews of children eleven years old or less; evidence.

(a) In any prosecution under the provisions of section twelve of this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is eleven years old or less must submit for law enforcement or discovery purposes. To the extent possible the rule shall protect the mental and emotional health of the child from the psychological damage of repeated interrogation and at the same time preserve the rights of the public and the defendant.

(b) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.

(c) In any prosecution under this article in which the victim’s lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim’s sexual conduct, opinion evidence of the victim’s sexual conduct and reputation evidence of the victim’s sexual conduct shall not be admissible. In any other prosecution under
this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: Provided, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(d) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible: Provided, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(e) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.


Any person who shall cruelly ill treat, abuse, or inflict unnecessarily cruel punishment upon, any infant or minor child, and any person, having the care, custody or control of any minor child, who shall willfully abandon or neglect the same, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, and, in the discretion of the court, may be imprisoned in the county jail not exceeding one year for each offense.

In addition to any penalty provided under this section and any restitution which may be ordered by the court under article eleven-a of this chapter, the court may order any person convicted under the provisions of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.
In this article, unless a different meaning plainly is required:

(1) "Forcible compulsion" means:

(a) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or

(b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or another person or in fear that he or another person will be kidnapped; or

(c) Fear by a child under sixteen years of age caused by intimidation, expressed or implied, by another person four years older than the victim.

For the purposes of this definition "resistance" includes physical resistance or any clear communication of the victim's lack of consent.

(2) "Married," for the purposes of this article in addition to its legal meaning, includes persons living together as husband and wife regardless of the legal status of their relationship.

(3) "Mentally defective" means that a person suffers from a mental disease or defect which renders such person incapable of appraising the nature of his conduct.

(4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to such person without his or her consent or as a result of any other act committed upon such person without his or her consent.

(5) "Physically helpless" means that a person is unconscious or for any reason is physically unable to
communicate unwillingness to an act.

(6) "Sexual contact" means any intentional touching, either directly or through clothing, of the anus or any part of the sex organs of another person, or the breasts of a female or intentional touching of any part of another person's body by the actor's sex organs, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

(7) "Sexual intercourse" means any act between persons not married to each other involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

(8) "Sexual intrusion" means any act between persons not married to each other involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

(9) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition.

(10) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(11) "Deadly weapon" means any instrument, device or thing capable of inflicting death or serious bodily injury, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.

§61-8B-10. Indecent exposure.

(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that
the conduct is likely to cause affront or alarm.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than two hundred fifty dollars and confined in the county jail not more than ninety days.


(a) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: Provided, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(b) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible: Provided, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(c) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.

(d) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.

In addition to any penalty provided under this article and any restitution, which may be ordered by the court under article eleven-a of this chapter, the court may order any person convicted under the provisions of this article to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the defendant is convicted, whether or not the victim is considered to have sustained bodily injury.

§61-8B-14. Limits on interviews of children eleven years old or less.

In any prosecution under this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is a child who is eleven years old or less must submit for law enforcement or discovery purposes. The rule shall to the extent possible protect the mental and emotional health of the child from the psychological damage of repeated interrogations while at the same time preserve the rights of the 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.

For the purposes of this article:

(a) “Minor” means any child under eighteen years of age.

(b) “Knowledge” means knowing or having reasonable cause to know which warrants further inspection or inquiry.

(c) “Sexually explicit conduct” includes any of the following, whether actually performed or simulated:

(1) Genital to genital intercourse;
(2) Fellatio;
(3) Cunnilingus;
(4) Anal intercourse;
(5) Oral to anal intercourse;
(6) Bestiality;
(7) Masturbation;
(8) Sadomasochistic abuse, including, but not limited
to, flagellation, torture or bondage;
(9) Excretory functions in a sexual context; or
(10) Exhibition of the genitals, pubic or rectal areas
of any person in a sexual context.
(d) “Person” means an individual, partnership, firm,
association, corporation or other legal entity.

§61-8C-2. Use of minors in filming sexually explicit
conduct prohibited; penalty.
(a) Any person who causes or knowingly permits,
uses, persuades, induces, entices or coerces such minor
to engage in or uses such minor to do or assist in any
sexually explicit conduct shall be guilty of a felony when
such person has knowledge that any such act is being
photographed or filmed. Upon conviction thereof, such
person shall be fined not more than ten thousand dollars,
or imprisoned in the penitentiary not more than ten
years, or both fined and imprisoned.
(b) Any person who photographs or films such minor
engaging in any sexually explicit conduct shall be guilty
of a felony, and, upon conviction thereof, shall be fined
not more than ten thousand dollars, or imprisoned in the
penitentiary not more than ten years, or both fined and
imprisoned.
(c) Any parent, legal guardian or person having
custody and control of a minor, who photographs or
films such minor in any sexually explicit conduct or
causes or knowingly permits, uses, persuades, induces,
entices or coerces such minor child to engage in or assist
in any sexually explicit act shall be guilty of a felony
when such person has knowledge that any such act may
be photographed or filmed. Upon conviction thereof,
such persons shall be fined not more than ten thousand
dollars, or imprisoned in the penitentiary not more than
ten years, or both fined and imprisoned.

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

(a) Any person who with knowledge, sends or causes
to be sent, or distributes, exhibits, or displays or
transports with the intent to distribute, exhibit or
display any material visually portraying a minor
engaged in any sexually explicit conduct shall be guilty
of a misdemeanor, and, upon conviction thereof, shall be
imprisoned in the county jail not more than twelve
months and fined not more than two thousand dollars.

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

§61-8C-4. Payments of treatment costs for minor.

In addition to any penalty provided under this article
and any restitution which may be ordered by the court
under article eleven-a of this chapter, the court may
order any person convicted under the provisions of this
article to pay all or any portion of the cost of medical,
psychological or psychiatric treatment of the minor
resulting from the act or acts for which the person is
convicted, whether or not the minor is considered to
have sustained bodily injury.

§61-8C-5. Limits on interviews of children eleven years old or less; evidence.

(a) In any prosecution under this article, the court
may provide by rule for reasonable limits on the number
of interviews to which a victim who is eleven years old
or less must submit for law enforcement or discovery
purposes. The rule shall to the extent possible protect
the mental and emotional health of the child from the
(b) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.

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.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor, shall be eligible for probation, notwithstanding the provisions of sections eighteen and nineteen, article eleven, chapter sixty-one of this code.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentation or brandishing of a firearm shall be ineligible for probation. Nothing in this section shall apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm.

(c) (1) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentation or brandishing of a firearm shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is
either (i) found by the court upon a plea of guilty or nolo contendere, or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such jury a special interrogatory for such purpose or (iii) found by the court, if the matter be tried by the court, without a jury.

(2) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:

(A) Shall apply to all applicable offenses occurring on or after the first day of August of that year;

(B) Shall apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(C) Shall apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried;

(D) Shall not apply with respect to cases not affected by such amendment and in such cases the prior provisions of this section shall apply and be construed without reference to such amendment; and

Insofar as such amendments relate to mandatory sentences without probation, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(d) For the purpose of this section, the term “firearm” shall mean any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the
action of an explosive, gunpowder, or any other similar means.

(e) In the case of any person who has been found guilty of, or pleaded guilty to, a felony or misdemeanor under the provisions of section twelve or twenty-four, article eight of chapter sixty-one, or under the provisions of article eight-c or eight-b, both of chapter sixty-one, all of this code, such person shall only be eligible for probation after undergoing a physical, mental and psychiatric study and diagnosis which shall include an on-going treatment plan requiring active participation in sexual abuse counseling at a mental health facility or through some other approved program: Provided, That nothing disclosed by the person during such study or diagnosis shall be made available to any law enforcement agency, or other party without that person's consent, or admissible in any court of this state, unless such information disclosed shall indicate the intention or plans of the probationer to do harm to any person, animal, institution, or property, in which case such information may be released only to such persons as might be necessary for protection of the said person, animal, institution, or property.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the prisoner will be subserved thereby, and subject to the limitations hereinafter provided, shall release any such prisoner on parole for such terms and upon such conditions as are provided by this article. Any prisoner of a penitentiary of this state, to be eligible for parole:

(1)(A) Shall have served the minimum term of his or her indeterminate sentence, or shall have served one fourth of his or her definite term sentence, as the case may be, except that in no case shall any person who committed, or attempted to commit a felony with the use, presentment or brandishing of a firearm, be eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed
by the court, whichever is less: Provided, That any
person who committed, or attempted to commit, any
violation of section twelve, article two, chapter sixty-one
of this code, with the use, presentment or brandishing
of a firearm, shall not be eligible for parole prior to
serving a minimum of five years of his or her sentence
or one third of his or her definite term sentence,
whichever shall be the greater. Nothing in this section
shall apply to an accessory before the fact or a principal
in the second degree who has been convicted as if he or
she were a principal in the first degree if, in the
commission of or in the attempted commission of the
felony, only the principal in the first degree used,
presented or brandished a firearm. No person is
ineligible for parole under the provisions of this
subdivision because of the commission or attempted
commission of a felony with the use, presentment or
brandishing of a firearm unless such fact is clearly
stated and included in the indictment or presentment by
which such person was charged and was either (i) found
by the court at the time of trial upon a plea of guilty
or nolo contendere, or (ii) found by the jury, upon
submitting to such jury a special interrogatory for such
purpose if the matter was tried before a jury, or (iii)
found by the court, if the matter was tried by the court
without a jury.

For the purpose of this section, the term "firearm"
shall mean any instrument which will, or is designed to,
or may readily be converted to, expel a projectile by the
action of an explosive, gunpowder or any other similar
means.

(B) The amendments to this subsection adopted in the
year one thousand nine hundred eighty-one:

(i) Shall apply to all applicable offenses occurring on
or after the first day of August of that year;

(ii) Shall apply with respect to the contents of any
indictment or presentment returned on or after the first
day of August of that year irrespective of when the
offense occurred;

(iii) Shall apply with respect to the submission of a
special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried;

(iv) Shall not apply with respect to cases not affected by such amendment and in such cases the prior provisions of this section shall apply and be construed without reference to such amendment.

Insofar as such amendments relate to mandatory sentences restricting the eligibility for parole, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(2) Shall not be under punishment or in solitary confinement for any infraction of prison rules:

(3) Shall have maintained a record of good conduct in prison for a period of at least three months immediately preceding the date of his or her release on parole:

(4) Shall have submitted to the board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment, said parole release plan having been approved by the commissioner of corrections or his or her authorized representative.

(5) Shall have satisfied the board that if released on parole he or she will not constitute a danger to the community.

Except in the case of one serving a life sentence, no person who has been previously twice convicted of a
felony may be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. No person sentenced for life may be paroled until he or she has served ten years, and no person sentenced for life who has been previously twice convicted of a felony may be paroled until he or she has served fifteen years. In the case of a person sentenced to any penal institution of this state, it shall be the duty of the board, as soon as such person becomes eligible, to consider the advisability of his or her release on parole. If, upon such consideration, parole be denied, the board shall at least once a year reconsider and review the case of every prisoner so eligible, which reconsideration and review shall be by the entire board. If parole be denied, the prisoner shall be promptly notified.

(b) In the case of any person sentenced to or confined under sentence in any city or county jail in this state, the board shall act only upon written application for parole. If such jail prisoner is under sentence on a felony conviction, the provisions hereof relating to penitentiary prisoners shall apply to and control his or her release on parole. If such person is serving time on a misdemeanor conviction, he or she is eligible for parole consideration, upon receipt of his or her written parole application and after time for probation release by the sentencing court or judge has expired.

(c) The board shall, with the approval of the governor, adopt rules and regulations governing the procedure in the granting of parole. No provision of this article and none of the rules and regulations adopted hereunder are intended or shall be construed to contravene, limit or otherwise interfere with or affect the authority of the governor to grant pardons and reprieves, commute sentences, remit fines or otherwise exercise his or her constitutional powers of executive clemency.

The board shall be charged with the duty of supervising all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out of state parolee supervision.
(d) When considering a penitentiary prisoner for release on parole, the board of parole shall have before it an authentic copy of or report on the prisoner's current criminal record as provided through the department of public safety of West Virginia, the United States department of justice or other reliable criminal information sources and written reports of the warden or superintendent of the penitentiary, as the case may be, to which such prisoner is sentenced:

(1) On the prisoner's conduct record while in prison, including a detailed statement showing any and all infractions of prison rules by the prisoner and the nature and extent of discipline and punishment administered therefor;

(2) On improvement or other changes noted in the prisoner's mental and moral condition while in prison, including a statement expressive of the prisoner's current attitude toward society in general, toward the judge who sentenced him or her, toward the prosecuting attorney who prosecuted him or her, toward the policeman or other officer who arrested the prisoner and toward the crime for which he or she is under sentence and his or her previous criminal record;

(3) On the prisoner's industrial record while in prison, showing the nature of his or her prison work or occupation and the average number of hours per day he or she has been employed in prison industry and recommending the nature and kinds of employment which he or she is best fitted to perform and in which the prisoner is most likely to succeed when he or she leaves prison;

(4) On physical, mental and psychiatric examinations of the prisoner conducted, insofar as practicable, within the two months next preceding parole consideration by the board.

The board may waive the requirement of any such report when not available or not applicable as to any prisoner considered for parole but, in every such case, shall enter in the record thereof its reason for such waiver: Provided, That in the case of a prisoner who is
incarcerated because such prisoner has been found guilty of, or has pleaded guilty to a felony under the provisions of section twelve, article eight, chapter sixty-one of this code or under the provisions of article eight-b or eight-c of chapter sixty-one, the board may not waive the report required by this subsection and the report shall include a study and diagnosis which shall include an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: Provided, however, That nothing disclosed by the person during such study or diagnosis shall be made available to any law enforcement agency, or other party without that person's consent, or admissible in any court of this state, unless such information disclosed shall indicate the intention or plans of the parolee to do harm to any person, animal, institution, or to property. Progress reports of outpatient treatment shall be made at least every six months to the parole officer supervising such person. In addition, in such cases, the parole board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the parole board of the circumstances surrounding a conviction or plea of guilty, plea bargaining and other background information that might be useful in its deliberations. The board shall also notify the victim, or the parents or guardian of the victim if the victim is still a minor, of the person being considered for parole in such a case.

Before releasing any penitentiary prisoner on parole, the board of parole shall arrange for the prisoner to appear in person before the board and the board may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the board made pursuant to the provisions hereof. The board shall reach its own written conclusions as to the desirability of releasing such prisoner on parole. The warden or superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the board of parole. All information, records and reports received by the board shall be kept on permanent file.
The board and its designated agents shall at all times have access to inmates imprisoned in any penal or correctional institutions of this state or in any city or county jail in this state, and shall have the power to obtain any information or aid necessary to the performance of their duties from other departments and agencies of the state or from any political subdivision thereof.

The board shall, if so requested by the governor, investigate and consider all applications for pardon, reprieve or commutation and shall make recommendation thereon to the governor.

Prior to making such recommendation and prior to releasing any penitentiary person on parole, the board shall notify the sentencing judge and prosecuting attorney at least ten days before such recommendation or parole.

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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.


§18-22-3. Assignment to salary schedule; actual salary.


§18-22-5. Merit increases and salary adjustment.


There is hereby established a state minimum salary schedule for full-time faculty employed by the board of regents consisting of a minimum salary for each academic rank in accordance with years of experience: Provided, That it is the intention of the Legislature to create a schedule of minimum salary goals in higher education subject to the availability of funds; and with the exception of the placement of all full-time faculty members included under the provisions of this article on the schedule at zero years of experience, nothing in this article shall be construed to guarantee payment to any faculty member of the salary indicated on the appropriate schedule at the actual years of experience.

MINIMUM SALARY SCHEDULE FOR FULL-TIME FACULTY AT BACCALAUREATE AND TWO-YEAR INSTITUTIONS

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### 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**

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MINIMUM SALARY SCHEDULE FOR FULL-TIME FACULTY AT DOCTORAL INSTITUTIONS (WEST VIRGINIA UNIVERSITY)

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§18-22-3. Assignment to salary schedule; actual salary.

(a) Upon the effective date of this article, each faculty member then employed shall be given notice of the placement on the minimum salary schedule which is appropriate to such faculty member's years of experience and to which such individual has been assigned, notwithstanding the actual salary paid under the provisions of this article.

(b) Each full-time faculty member employed as of the effective date of this section shall receive, for full-time employment at the same academic rank during the academic year one thousand nine hundred eighty-six—eighty-seven and thereafter, a salary which is six hundred dollars greater than the salary being paid such
faculty member for the academic year one thousand nine hundred eighty-five—eighty-six.

(c) Each full-time faculty member, whose salary under subsection (b) is less than the salary for zero years of experience for the appropriate academic rank as set forth in section two of this article, shall receive additional amounts so that salary is at least the amount prescribed for the appropriate academic rank at zero years of experience.

(d) Funds remaining after increasing the salary of each full-time faculty member in accordance with subsection (c) of this section shall be used to pay that amount that is the difference between the salary as prescribed in subsection (b) of this section and the appropriate salary for each full-time faculty member's appropriate placement on the schedule: Provided, That such amount may be reduced proportionately based upon the amount of funds available for such purpose.

(e) The salary of any full-time faculty member shall not be reduced by the provisions of this article.

(f) Upon promotion in rank, placement on the minimum salary schedule will be such as to provide a salary increase of at least ten percent, and shall be at least the amount prescribed for the appropriate academic rank to which promoted at zero years of experience.


Any person hired as a full-time faculty member after the effective date of this section shall be assigned a placement on the minimum salary schedule which is appropriate to such person's academic rank and years of experience, and such person shall have a salary of at least zero years of experience at the appropriate academic rank, and such proportionate increases as are or may be made from funds available for such purpose in accordance with the provisions of this article.

§18-22-5. Merit increases and salary adjustment.

Nothing in this article shall be construed to prohibit merit increases or salary adjustments that rectify
inequities or accommodate competitive market conditions in specific areas of specialty, including inequities within the rank of full professors at doctoral and master's level institutions: \textit{Provided}, That funds for such increases and/or adjustments shall be distributed in accordance with board policy and shall be available to all state institutions of higher education on an equitable basis.

\section*{CHAPTER 13}
\textit{(H. B. 145—By Delegate Bailey and Delegate Murphy)}

\textit{[Passed May 22, 1986; in effect July 1, 1986. Approved by the Governor.]}\n
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.

\textit{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:

\section*{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.

Notwithstanding the provisions of section nineteen of this article and if authorized by a majority of the board of advisors of the institution of higher education, the president of such institution may transfer moneys within the general revenue account or accounts and between items of allocation or appropriation therein or subaccounts thereof: Provided, That no such transfer may increase the moneys allocated or appropriated to any personal services item or subaccount of a general revenue account of such institution. A request for such transfer of moneys, when desired, shall be made in writing by the president of the institution and shall be submitted to each member of the board of advisors for such institution. Whenever such request is approved, the board of regents shall be notified of such authorization, and the transfer shall have been effected prior to any expenditure of the moneys so transferred. Not more than five percent of the total allocation or appropriation in any general revenue account of an institution may be transferred within such account and between the items of allocation subaccounts thereof or within such account and between the items of appropriation thereof. The authority herein granted shall expire on the thirty-first day of December, one thousand nine hundred eighty-seven.

CHAPTER 18. EDUCATION.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.


(a) After the thirtieth day of June, one thousand nine hundred eighty-one, there shall be established at each
state college and university, hereinafter referred to as the "institution," excluding centers and branches thereof, an institutional board of advisors. The board of advisors shall replace any advisory board in existence under the previous provisions of this section, except that any such advisory board may continue until the thirtieth day of June, one thousand nine hundred eighty-one. The board of advisors shall consist of eleven members, including an administrative officer of the institution appointed by the president of the institution; a full-time member of the faculty with the rank of instructor or above duly elected by the faculty; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body; a member of the institutional classified staff duly elected by the classified staff; and, appointed by the board of regents, seven lay citizens of the state who have demonstrated a sincere interest in and concern for the welfare of the institution and who are representative of its population and occupations, including at least two alumni of the institution. Of the seven lay citizen members, no more than four may be of the same political party. The administrative officer, faculty member, student member and classified staff member shall serve for a term of one year and the seven lay citizen members shall serve terms of four years each, except that the initial appointments shall be for terms of one, two, three and four years. All members shall be eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled within sixty days of the occurrence thereof in the same manner as the original appointment or election. All initial terms shall begin on the first day of July, one thousand nine hundred eighty-one. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of April preceding the commencement of the term.

(b) The board of advisors shall hold a regular meeting at least quarterly, commencing in July of each year. Additional meetings may be held upon the call of the chairman, president of the institution, or upon the
request of at least four members. One of the seven lay
citizen members shall be elected as chairman by the
board of advisors in July of each year: Provided, That
a lay citizen member may not serve as chairman for
more than two consecutive years at a time. A majority
of the members shall constitute a quorum for conducting
the business of the board of advisors. The president of
the institution shall make available resources of the
institution for conducting the business of the board of
advisors. The members of the board of advisors shall be
reimbursed for all reasonable and necessary expenses
actually incurred in the performance of their duties
under this section upon presentation of an itemized
sworn statement thereof. All expenses incurred by the
board of advisors and the institution under this article
shall be paid from funds allocated to the institution for
such purpose.

(c) The board of advisors shall review, prior to their
submission by the president to the board of regents, all
proposals of the institution in the areas of mission,
academic programs, budget, capital facilities and such
other matters as requested by the president of the
institution or the board of regents or otherwise assigned
to it by law. The board of advisors shall comment on
each such proposal in writing, with such recommenda-
tions for concurrence therein or revision or rejection
thereof as it deems proper. Such written comments and
recommendations shall accompany the proposal to the
board of regents, and the board of regents shall include
such comments and recommendations in its considera-
tion of and action on the proposal. The board of regents
shall promptly acknowledge receipt of the comments
and recommendations and shall notify the board of
advisors in writing of any action taken thereon.

(d) Upon request therefor in writing by the president
of the institution, the board of advisors may authorize
transfers between items of allocation or appropriation in
accordance with the provisions of section nineteen-a,
article two, chapter five-a of this code.

(e) The board of advisors shall review, prior to their
implementation by the president, all proposals regard-
ing institution-wide personnel policies. The board of advisors may comment on such proposals in writing.

(f) Upon the occurrence of a vacancy in the office of president of the institution, the board of advisors shall serve as a search and screening committee for candidates to fill the vacancy under guidelines established by the board of regents. When serving as a search and screening committee, the board of advisors and the board of regents are each authorized to appoint up to three additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. Only for the purposes of the search and screening process, such additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the board of regents for consideration and appointment. If the board of regents rejects all candidates so submitted, the committee shall submit the names of at least three additional candidates, and this process shall be repeated until the board of regents appoints one of the candidates so submitted. The board of regents shall provide all necessary staff assistance to the board of advisors in its 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
of this code, the Legislature further finds that public schools are able to provide a special environment for the training of children, parents and school personnel in the prevention of child abuse and neglect and child assault and that child abuse and neglect prevention and child assault prevention programs in the public schools are an effective and cost-efficient method of reducing the incidents of child abuse and neglect, promoting a healthy family environment and reducing the general vulnerability of children.

(b) County boards of education shall be required, to the extent funds are provided, to establish programs for the prevention of child abuse and neglect and child assault. Such programs shall be provided to pupils, parents and school personnel as deemed appropriate. Such programs shall be in compliance with regulations to be developed by the state board of education with the advice and assistance of the state department of human services and the department of public safety: Provided, That any such programs which substantially comply with the regulations adopted by the board and were in effect prior to the adoption of the regulations may be continued.

(c) Funds for implementing the child abuse and neglect prevention and child assault prevention programs may be allocated to the county boards of education from the children’s trust fund established pursuant to the provisions of article six-c, chapter forty-nine of this code or appropriated for such purpose by the Legislature.

(d) County boards of education shall request from the state criminal identification bureau the record of any and all criminal convictions relating to child abuse, sex-related offenses or possession of controlled substances with intent to deliver same for all of its future employees. This request shall be made immediately after the effective date of this section, and thereafter as warranted.

§18-5-19b. Adult education classes and programs; tuition; authority of county boards to contract with federal agencies.
The board of education of any county shall have authority to provide classes and programs for adult education and to charge tuition for members of such classes and/or programs, such tuitions not to exceed in any case the actual cost of operation of such classes and/or programs. The county board of education shall also have authority to enter into contracts of agreement with authorized agencies of the federal government for the education of adults and to provide, assemble and house materials and equipment for efficient instruction in any and all such classes and/or programs, contract for instruction for the term of the class and/or program to be offered, and to use school facilities by way of buildings and equipment under the control of said board. Any funds accruing from such tuitions shall be credited to adult education in the current expense fund of the county board of education and reported each year as of June thirtieth in the manner required for other financial reports of the board.

The board of education of any county shall have authority to enter into contracts of agreement with temporary teachers for the purpose of teaching adult education classes or programs which do not exceed ninety days or seven hundred twenty hours. The appointment of a temporary teacher is a contract of agreement for the duration of the class or program and the temporary teacher shall not accrue benefits of retirement, personal leave, medical or life insurance, seniority rights, or any other provisions relating to salaries, wages and benefits pursuant to article four, chapter eighteen-a of this code: Provided, That such temporary appointment does not preclude the benefits mandated by federal law, workers’ compensation and liability insurance coverage for the duration of the class or program.

§18-5-22. Medical and dental inspection; school nurses.

County boards of education shall provide proper medical and dental inspections for all pupils attending the schools of their county and shall further have the authority to take any other action necessary to protect the pupils from infectious diseases, including the
authority to require from all school personnel employed in their county, certificates of good health and of physical fitness.

For the school year one thousand nine hundred eighty-six—eighty-seven, each county board of education shall employ full-time at least one school nurse for every one thousand eight hundred kindergarten through seventh grade pupils in net enrollment or major fraction thereof. For the school year one thousand nine hundred eighty-seven—eighty-eight, and each school year thereafter, each county board of education shall employ full-time at least one school nurse for every one thousand five hundred kindergarten through seventh grade pupils in net enrollment or major fraction thereof: Provided, That each county shall employ full-time at least one school nurse: Provided, however, That a county board may contract with a public health department for services deemed equivalent to those required by this section in accordance with a plan to be approved by the state board: Provided further, That the state board shall promulgate rules and regulations requiring the employment of school nurses in excess of the number required by this section to ensure adequate provision of services to severely handicapped pupils.

Any person employed as a school nurse shall be a registered professional nurse properly licensed by the West Virginia board of examiners for registered professional nurses in accordance with article seven, chapter thirty of this code.

§18-5-39. Establishment of summer school programs; tuition.

Inasmuch as the present county school facilities for the most part lie dormant and unused during the summer months, and inasmuch as there are many students who are in need of remedial instruction and others who desire accelerated instruction, it is the purpose of this section to provide for the establishment of a summer school program, which program is to be separate and apart from the full school term as established by each county.
The board of education of any county shall have authority to establish a summer school program utilizing the public school facilities and to charge tuition for students who attend such summer school, such tuition not to exceed in any case the actual cost of operation of such summer school program: Provided, That any deserving pupil whose parents, in the judgment of the board, are unable to pay such tuition, may attend at a reduced charge or without charge. The county board of education shall have the authority to determine the term and curriculum of such summer schools based upon the particular needs of the individual county. The curriculum may include, but is not limited to, remedial instruction, accelerated instruction, and the teaching of manual arts. The term of such summer school program may not be established in such a manner as to interfere with the regular school term.

The county boards of education may employ as teachers for this summer school program any certified teacher. Certified teachers employed by the county board of education to teach in the summer school program shall be paid an amount to be determined by the board and shall enter into a contract of employment in such form as is prescribed by the county board of education: Provided, That teachers who teach summer courses of instruction which are offered for credit and which are taught during the regular school year shall be paid at the same daily rate such teacher would receive if paid in accordance with the then current minimum monthly salary in effect for teachers in that county.

Any funds accruing from such tuitions shall be credited to and expended within the existing framework of the general current expense fund of the county board 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.

The county board of education of every county, not later than the first day of August of each year, shall employ the equivalent of a full-time county director of school attendance if such county has a net enrollment of more than four thousand pupils, at least a half-time director of school attendance if such county has a net enrollment of less than four thousand pupils and such assistant attendance directors as deemed necessary. Such persons shall have the written recommendation of the county superintendent.

The county board of education may set up such special and professional qualifications for attendance directors and assistants as are deemed expedient and proper and are consistent with regulations of the state board of education relating thereto.

The attendance director or assistant director shall be paid a monthly salary as fixed by the county board. Before receiving such monthly salary, the attendance director or assistant director shall file with the county superintendent a certified statement showing the activities in school attendance service for the month and the number of days actually spent in the performance of such duties.

The county board of education shall reimburse such employees for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.

The power of removal of the county attendance director or an assistant attendance director shall rest with the county board of education: Provided, That reasons for contemplated dismissal shall be reduced to writing, a copy of which shall be furnished the director in question with opportunity to be heard in his own behalf by the county board of education. The decision of the county board of education shall be final.

§18-8-4. Duties of attendance director and assistant
The county attendance director and the assistants shall diligently promote regular school attendance. They shall ascertain reasons for inexcusable absences from school of pupils of compulsory school age as defined under this article, and shall take such steps as are, in their discretion, best calculated to correct attitudes of parents and pupils which result in absences from school even though not clearly in violation of law.

If it is found that absence from school is in violation of law, the attendance director or assistant, in the case of first offense that school year, shall serve written notice to the parent, guardian or custodian of such child that the attendance of such child at school is required and that within ten days of receipt of such notice the parent, guardian or custodian, accompanied by the child if possible, shall report in person to the school the child attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the child; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against such parent, guardian or custodian before a magistrate of the county: Provided, That for a subsequent offense in any school year no such notice shall be required. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a warrant for the arrest of the accused shall issue to any officer authorized by law to arrest persons charged with offenses against the state. More than one warrant may be issued on the same complaint. The warrant shall be executed within ten days of its issuance or as soon thereafter as the accused can be found.

The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court clerk as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate
within ten days of execution of the warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

When any doubt exists as to the age of a child absent from school, the attendance director shall have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of such child, stating age of such child. The county attendance director or assistant shall, in the performance of his duties, have authority to take without warrant any child absent from school in violation of the provisions of this article and to place such child in the school in which such child is or should be enrolled.

The county attendance director shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director shall be responsible under direction of the county superintendent for the efficient administration of school attendance in the county. In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors shall also perform the following duties:

(a) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(b) Advise with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(c) Cooperate with existing state and federal agencies charged with enforcement of child labor laws;
(d) Prepare a report for submission by the county superintendent to the state superintendent of schools on school attendance, at such times and in such detail as may be required; also, file with the county superintendent and county board of education at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(e) Promote attendance in the county by the compilation of data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(f) Participate in school teachers' conferences with parents and students;

(g) Assist in such other ways as the county superintendent may direct for improving school attendance.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


For the fiscal year beginning on the first day of July, one thousand nine hundred eighty-six, only, the multiplier for the portion of the foundation allowance for fixed charges for professional educators and for other personnel pursuant to subsection two, section six of this article shall be three percent.


For the fiscal year beginning on the first day of July, one thousand nine hundred eighty-one and for the next four fiscal years, there shall be an allowance for loss reduction which shall be distributed as provided in this section.

In order to determine which counties are entitled to such allowance, and the amount of such allowance, the state board shall first compute the amount to be received by each county from the regular state aid
appropriation for the fiscal year beginning on the first
day of July, one thousand nine hundred eighty-one,
allocated as provided in section twelve of this article.
The state board shall then compare such amount with
the state aid which each such county would have
received from the plan in effect during the fiscal year
one thousand nine hundred eighty-one. The state board
shall then compute the amount of each county's salary
increase for professional educators and for service
personnel to which it adds an amount for fixed charges
computed as provided in section six of this article and
the increase allowed for bus fleet replacement. The state
board shall then determine which counties' salary
increase plus allocated fixed charges and increase
allowed for bus fleet replacement exceeds the difference
in state aid from the cited years and the amount of this
excess found shall be allocated to the affected counties
from funds appropriated for this purpose for the fiscal
years beginning the first day of July, one thousand nine
hundred eighty-one, eighty-two, eighty-three, eighty-
four and eighty-five.

For the fiscal year beginning the first day of July, one
thousand nine hundred eighty-six only, an amount equal
to one third of the amount received pursuant to this
section for the fiscal year beginning the first day of July,
one thousand nine hundred eighty-five, shall be distrib-
uted to those counties receiving such allowance for loss
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.

Until the person qualifies for a permanent certificate,
any professional or first class certificate based upon a
bachelor's degree shall be renewable provided the
holder: (1) Files application on a prescribed form with
the state department of education; (2) presents an
official transcript of six semester hours of approved credit, as may be prescribed by the state board: 

Provided, That such renewal is completed after the beginning of the period of validity of the certificate to be renewed and within the five-year period immediately preceding the date of application for renewal; and (3) submits a recommendation based on successful teaching experience from the county superintendent of schools of the county in which he last taught or resides.

The holder of a professional certificate, valid for five years, shall have his certificate made permanent upon meeting either of the following requirements: (1) Completion of the second renewal, in accordance with the provisions set forth in (2) above; (2) after five years of service in the public schools, presentation of a transcript showing the completion of requirements for a master's degree from an institution of higher education accredited to offer the master's degree and in a program relevant to the public school program or completes the fifth year of training leading to a bachelor's degree in library science from a school fully approved by the American library association. In either event the person must file application on a prescribed form with the state department of education and must submit a recommendation from the county superintendent of schools of the county in which he last taught or resides.

All certificates and permits, other than the professional certificate, shall be renewed in accordance with state board regulations.

If the applicant seeking renewal has cause to believe that his county superintendent refuses to give a recommendation without just cause, he shall have the right, in such case, to appeal to the state superintendent of schools whose responsibility it shall be to investigate the matter and issue a certificate if, in his opinion, the county superintendent's recommendation was withheld arbitrarily.

A person who has reached the age of sixty and holds 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

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On and after the first day of July, one thousand nine 
hundred eighty-six, each teacher shall receive the 
amount prescribed in the "state minimum salary 
schedule" as set forth in this section, specific additional
amounts prescribed in this section or article, and any
county supplement in effect in a county pursuant to
section five-a of this article during the contract year.

On and after the first day of July, one thousand nine
hundred eighty-six, six hundred dollars shall be paid
annually to each classroom teacher who has at least
twenty years of teaching experience. Such payments
shall be in addition to any amounts prescribed in the
"state minimum salary schedule," shall be paid in equal
monthly installments, and shall be deemed a part of the
state minimum salaries for teachers.

§18A-4-3. State minimum annual salary increments for
principals and assistant principals.

In addition to any salary increments for principals
and assistant principals, in effect on the first day of
January, one thousand nine hundred eighty-six and paid
from local funds, and in addition to the county schedule
in effect for teachers, the county board shall pay each
principal a principal's salary increment and each
assistant principal an assistant principal's salary
increment as prescribed by this section commencing on
the first day of July, one thousand nine hundred eighty-
six, from state funds appropriated therefor.

State funds for this purpose shall be paid within the
West Virginia public school support plan in accordance
with article nine-a, chapter eighteen of this code.

The salary increment herein for each principal shall
be determined by multiplying the basic salary for
teachers in accordance with the classification of
certification and of training of said principal as
prescribed in this article, by the appropriate percentage
rate prescribed herein according to the number of
teachers supervised.

STATE MINIMUM SALARY
INCREMENT RATES FOR PRINCIPALS

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The salary increment herein for each assistant principal shall be determined in the same manner as that for principals, utilizing the number of teachers supervised by the principal under whose direction the assistant principal works, except that the percentage rate shall be fifty percent of the rate prescribed for said principal.

Salaries for employment beyond the minimum employment term shall be at the same daily rate as the salaries for the minimum employment terms.

For the purpose of determining the number of teachers supervised by a principal, the county board shall use data for the second school month of the prior school term and the number of teachers shall be interpreted to mean the total number of professional educators assigned to each school on a full-time equivalency basis: Provided, That due to a change in circumstances because of consolidation or catastrophe, the county board of education shall determine what is a reasonable number of supervised teachers in order to establish the appropriate increment percentage rate.

No county shall reduce local funds allocated for salary increments for principals and assistant principals in effect on the first day of January, one thousand nine hundred eighty-six, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

Nothing herein shall prevent a county board from providing, in a uniform manner, salary increments greater than those required by this section.

§18A-4-4. Minimum salary schedule for teachers having specialized training.
The state board of education shall establish the minimum salary schedule for teachers where specialized training may be required for vocational, technical and adult education, and such other permits as may be authorized by said board.

On and after the first day of July, one thousand nine hundred eighty-five, any vocational industrial, technical, occupational home economics, or health occupations teacher who is required to hold a vocational certificate and is paid a salary equivalent to the amount prescribed for "A.B. + 15" training classification in the state minimum salary schedule for teachers under section two of this article shall, upon application therefor, receive advanced salary classification and be entitled to increased compensation on and after such date in respect to and based upon additional semester hours, approved by the state board of education and completed either prior to or subsequent to such date. All such hours earned must be from a regionally accredited institution of higher education.

The advanced salary classification shall be as follows:

(1) Those who have earned fifteen such additional semester hours shall receive an amount equal to that prescribed for the "M.A." training classification under section two of this article.

(2) Those who have earned thirty such additional semester hours shall receive an amount equal to that prescribed for the "M.A. + 15" training classification under section two of this article.

(3) Those who have earned forty-five such additional semester hours shall receive an amount equal to that prescribed for the "M.A. + 30" training classification under section two of this article.

Any such teacher who has a permanent vocational certificate and who has earned or earns a bachelor's degree prior or subsequent to the issuance of such certificate shall be entitled to receive the amount prescribed for the "M.A. + 30" training classification upon application therefor, such advanced salary to take
effect immediately upon qualification therefor: Provided, That any vocational teacher receiving the amount prescribed for the “M.A. + 30” training classification under prior enactments of this section who has not been issued a permanent vocational certificate shall not have such salary reduced as a result of this section: Provided, however, That any teacher with a vocational certificate and under contract for the school year one thousand nine hundred eighty-five — eighty-six who has earned a bachelor’s degree prior to the end of such school year shall be entitled to receive the amount prescribed for the “M.A. + 30” training classification, upon application therefor, for the school year beginning on the first day of July, one thousand nine hundred eighty-six, and thereafter.

No teacher holding a valid professional certificate shall incur a salary reduction resulting from assignment out of the teacher’s field by the superintendent, with the approval of the county board, under any authorization or regulation of the state board.

§18A-4-8a. Service personnel minimum monthly salaries.

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105 Watchman ................................................ B
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On and after the first day of July, one thousand nine hundred eighty-six, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale" as set forth in this section, and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the "state minimum pay scale" set forth in this section.

Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times his usual hourly rate.

Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for such additional hours or fraction thereof at a rate of one and one-half times their usual hourly rate and paid entirely from county board of education funds.

No service employee shall have his daily work schedule changed during the school year without his written consent, and his required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

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

At the beginning of the employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and shall be transferable within the state. A change in job assignment during the school year shall in no way
A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or other cause authorized or approved by the board, shall be paid the full salary from his regular budgeted salary appropriation during the period which such employee is absent, but not to exceed the total amount of leave to which such employee is entitled: Provided, That each such employee shall be permitted three days of such leave annually, which may be taken without regard to the cause for the absence, except that personal leave without cause may not be taken on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as the case may be: Provided, however, That notice of such leave day shall be given to the employee's principal or immediate supervisor, as the case may be, at least twenty-four hours in advance, except that in the case of sudden and unexpected circumstances, such notice shall be given as soon as reasonably practicable; however, the use of such day may be denied if, at the time notice is given, either fifteen percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, as the case may be, have previously notified the principal or immediate supervisor of their intention to use that day for such leave: Provided further, That such leave shall not be used in connection with a concerted work stoppage or strike. Where the cause for leave had its origin prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term. If an employee should use personal leave which the employee has not yet accumulated on a monthly basis and subsequently leave the employment, the employee shall be required to reimburse the board for the salary or wages paid to him for such unaccumulated leave.

The board may establish reasonable regulations for reporting and verification of absences for cause; and if any error in reporting absences should occur it shall have authority to make necessary salary adjustments in...
the next pay after the employee has returned to duty or
in the final pay if the absence should occur during the
last month of the employment term.

A county board of education may establish a personal
leave bank or banks to which employees may contribute
no more than two days of personal leave per school year:
Provided, That such bank or banks be established either
jointly or separately for both professional personnel and
school service personnel and that a bank be available to
all school personnel. Such personal leave bank shall be
established and operated pursuant to rules and
regulations adopted by the county board: Provided,
however, That such rules and regulations may limit the
maximum number of days used by an employee, shall
require that leave bank days be used only by an active
employee with less than five days accumulated personal
leave who is absent from work due to accident or illness
of such employee, and shall prohibit the use of such days
with the extension of insurance coverage pursuant to
section twelve, article sixteen, chapter five of this code.
Such rules and regulations shall require that contribu-
tions shall reduce, to the extent of such contribution, the
number of personal leave days to which an employee is
entitled by this section: Provided further, That such
contribution shall not reduce personal leave days
without cause to which an employee is entitled. No
employee may be compelled to contribute to such
personal leave bank.

When an allowable absence does not directly affect the
instruction of the pupils or when a substitute employee
may not be required because of the nature of the work
and the duration of the cause for the allowable absence
of the regular employee, the administration, subject to
board approval, may use its discretion as to the need for
a substitute where limited absence may prevail.

If funds in any fiscal year, including transfers, are
insufficient to pay the full cost of substitutes for meeting
the provisions of this section, the remainder shall be
paid on or before the thirty-first day of August from the
budget of the next fiscal year.
Any board of education shall have authority to supplement such leave provisions in any manner it may deem advisable in accordance with applicable rules and regulations of the state board and the provisions of this chapter and chapter eighteen of this code.

§18A-4-17. Health and other facility employee salaries.

(a) The minimum salary scale for professional personnel and service personnel employed by the state department of education to provide educational and support services to residents of state department of health facilities and in the West Virginia schools for the deaf and the blind shall be the same as set forth in sections two, three and eight-a of this article. Additionally, such personnel shall receive the equivalent of salary supplements paid to professional and service personnel employed by the county board of education in the county wherein each facility is located, as set forth in sections five-a and five-b of this article. Professional personnel and service personnel in these facilities who earn advanced classification of training after the effective date of this section shall be paid such advanced salary from the date such classification of training is earned.

(b) Professional personnel employed by the department to provide educational service to residents in state department of health facilities or in the West Virginia schools for the deaf and the blind, shall be afforded all the rights, privileges and benefits established for such professional personnel under this article: Provided, That such benefits shall apply only within the facility at which employed: Provided, however, That under circumstances requiring a reduction in force of the professional personnel at a state department of health facility, the rights, privileges and benefits of the professional personnel at such facility shall be transferable for the purposes of employment at other department of health facilities.

(c) Nothing contained in this section shall be construed to mean that professional personnel and service personnel employed by the department of education to provide
edционal and support services to residents in state
department of health facilities and the West Virginia
schools for the deaf and the blind are other than state
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.


§5. Effect of future amendments of general law.


§1. Legislative findings and purpose.

The Legislature finds: (1) That in the year one thousand
nine hundred seventy-two, the governing authority of the
town of Hamlin located in Lincoln County, West Virginia,
pursuant to authority granted to it in section two, article
one, chapter ten of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, created the Hamlin
Public Library; (2) that this library is operated by a board of
directors appointed by the governing authority of the town
of Hamlin, as provided in section five of said article one,
which board is a public corporation under section nine of
said article one, having all the powers and duties vested in
library boards by article one of said chapter ten; (3) that the
county commission and the county board of education, both
of Lincoln County, have entered into contracts with this
library board, as permitted under section four of said article
one, for the library board to make its library materials and
services available without charge to all persons living in Lincoln County; (4) that branch libraries have been established in Alum Creek and Branchland, both located in Lincoln County; and (5) that other areas of Lincoln County have expressed interest in having branches of this library established in their area. The Legislature further finds and declares it to be in the public interest to provide for the Hamlin-Lincoln county public library a stable method of financing its operation to better serve persons in Lincoln County.

§2. Levies by county commission, county board of education and city of Hamlin to support Hamlin-Lincoln county public libraries.

(a) In order to provide for the support, maintenance and operation of the Hamlin-Lincoln County public libraries, Lincoln County, West Virginia, and any and all branches thereof, the Lincoln County board of education, the county commission of Lincoln County and the city of Hamlin, hereinafter described as the supporting agencies, shall, upon written request by the board of directors of the Hamlin-Lincoln County public libraries, levy annually on each one hundred dollars of assessed valuation of the property taxable by it according to the last assessment for state and county purposes, amounts as follows, for the fiscal year beginning the first day of July, one thousand nine hundred eighty-six, and each succeeding fiscal year:

(1) By the board of education of Lincoln County, from special and excess levies available to the board: On Class I property, seven tenths (7/10) of one cent per hundred; on Class II property, one and four-tenths (1.4) cents per hundred; on Class III property, two and eight-tenths (2.8) cents per hundred; and on Class IV property, two and eight-tenths (2.8) cents per hundred.

(2) By the county commission of Lincoln County: On Class I property, four tenths (4/10) of one cent per hundred; on Class II property, eight tenths (8/10) of one cent per hundred; on Class III property, one and six-tenths (1.6) cents per hundred; and on Class IV property, one and six-tenths (1.6) cents per hundred.

(3) By the city of Hamlin: On Class I property, one and two-tenths (1.2) cents per hundred; on Class II property,
two and four-tenths (2.4) cents per hundred; and on Class IV
property, four and eight-tenths (4.8) cents per hundred.
(b) Each year the board of directors of the Hamlin-
Lincoln County public libraries may request each of the
three supporting agencies to levy within the rates
prescribed in subsection (a), at the rate specified by the
board, on each one hundred dollars of assessed value of
property of the same class; and each of the three supporting
agencies shall levy as aforesaid and appropriate the revenue
derived from such levies to the Hamlin-Lincoln County
public libraries. In addition, each supporting agency may
appropriate to the public library any other general or
specific revenues or excess levies.
§3. Deposit and disbursement of funds.
(a) All money collected or appropriated by the three
supporting agencies for library purposes shall be deposited
as directed by the board of directors of the Hamlin-Lincoln
County public libraries in a bank or savings account
specified by the board.
(b) Disbursement of funds.—All moneys appropriated to
the Hamlin-Lincoln County public libraries and all income
realized by the operation of the public libraries shall be
used by the board of directors for the support, maintenance
and operation of the public libraries, and disbursed by it for
payment of: Salaries and wages; books and other library
materials such as periodicals, pamphlets, papers, works of
art, records and tapes; machinery, equipment and
furnishings; supplies and services; other costs and expenses
of operating and maintaining public libraries, including the
cost of maintaining, repairing, improving and replacing its
properties; and costs of acquiring additional property:
Provided, That all money appropriated by the city of
Hamlin shall be used only for the public library, or branches
thereof, located within the corporate limits of the city of
Hamlin.
(c) Accumulated surplus. —The board is hereby vested
with authority to accumulate a surplus from year to year
over and above the amount currently required for the
proper operation, maintenance and management of present
library facilities. Such accumulated surplus may be used
for the purchase or lease of new library facilities or
additions to existing library facilities, including the
equipping of such new facilities or additions to existing
facilities for library purposes; and to pledge by the
execution and delivery of appropriate legal instruments,
any real estate the board of directors may now own or which
it may hereafter acquire for the repayment of borrowed
funds; and the principal thereof and the interest thereon
may be paid out of the proceeds of the levies hereinbefore
authorized.


All employees of the Hamlin-Lincoln County public
library system shall be entitled to the benefits of the
provisions of chapter twenty-three and of article seven,
chapter five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended.

§5. Effect of future amendments of general law.

Amendments to article one of said chapter ten and to
other general laws shall not control this act except to the
extent that such amendments do not conflict with the
provisions of this act, unless the intent to amend this act is
expressly stated.


If any provision hereof is held to be invalid by a court of
competent jurisdiction, such invalidities shall not affect
other provisions of this act which can be given effect
without the invalid provision, and to this end, the
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.

For the purposes of this article: (1) “Eligible employee” means any regular full-time employee of the state or any spending unit thereof who is eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state: Provided, That the mandatory salary increase required by this article shall not apply to any faculty employee at public institutions of higher learning or any employee of the state whose compensation is fixed by statute or by statutory schedule, (except that the clerks, deputy clerks and magistrate assistants of magistrate courts shall be eligible for the incremental salary increases provided in this article and with such increases to be allowable in addition to the maximum salaries and compensation for such employee offices under the magistrate court system statutes of article one, chapter fifty of the code), nor shall this article be construed to mandate an increase in the salary of any elected or appointed officer of the states; (2) “years of service” means full years of totaled service as an employee of the state of West Virginia; (3) “spending unit” means any state office, department, agency, board, 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
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
surety insurance, on risks or operations in this state.

(b) This article shall not apply:

(1) To reinsurance, other than joint reinsurance to the extent stated in section eleven of this article;

(2) To life or accident and sickness insurance;

(3) To insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

(4) To insurance against loss of or damage to aircraft, including their accessories and equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of aircraft;

(5) To title insurance;

(6) To malpractice insurance insofar as the provisions of this article directly conflict and thereby are supplanted by article twenty-b of this chapter.

(c) If any kind of insurance, subdivision or combination thereof, or type of coverage, is subject to both the provisions of this article expressly applicable to casualty and surety insurance and to those expressly applicable to fire and marine insurance, the commissioner may apply to filings made for such kind of insurance the provisions of this article which are in his judgment most 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.

This article applies to medical malpractice insurance policies only. Nothing in this article shall be construed to supplant any provision of article twenty of this chapter which does not directly conflict with the provisions herein.
§33-20B-4. Disapproval of filings.

(a) If within the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the requirements of this article, he shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing specifying therein in what respects he finds such filing fails to meet the requirements of this article and stating that such filing shall not be effective. Within thirty days from the issuance of written notice of disapproval, any insurer or rating organization aggrieved by such disapproval of any filing may request a hearing thereon pursuant to section thirteen, article two of this chapter.

(b) If at any time subsequent to the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the requirements of this article, he shall send to the insurer or rating organization which made such filing a written order specifying in what respect he finds that such filing fails to meet the requirements of this article and a date, not less than thirty days from the issuance of such order, when such filing shall be deemed no longer effective. Within thirty days from the issuance of such order, any insurer or rating organization aggrieved by such order may request a hearing thereon pursuant to section thirteen, article two of this chapter. Any such order shall not affect any contract or policy made or issued prior to the expiration date set forth in such order.

(c) Any person or organization aggrieved by any filing which is in effect or the application thereof may request a hearing thereon pursuant to section thirteen, article two of this chapter. The insurer or rating organization which made such filing shall be notified in writing upon receipt of any such request for hearing and thereby made a party to such hearing. Upon such hearing, if the commissioner finds that such filing fails to meet the requirements of this article, he shall issue an order specifying in what respects he so finds and a date, not less than thirty days from the issuance of such order,
(d) Within the initial sixty-day waiting period, the commissioner shall hold a public hearing upon every filing which requests an increase in general rates of ten percent or more and upon every filing which, in the opinion of the commissioner, is of such import that it will affect the public. The insurer or rating organization which made such filing shall be notified in writing not less than fifteen days prior to the hearing date. Notice of the time, place and filing to be considered shall be published as a Class II legal advertisement in every county in the state in accordance with article three, chapter fifty-nine of this code.

§33-20B-6. Rate review and reporting.

(a) The commissioner shall review annually the rules, rates and rating plans filed and in effect for each insurer providing five percent or more of the malpractice insurance coverage in this state in the preceding calendar year to determine whether such filings continue to meet the requirements of this article and whether such filings are unfair or inappropriate given the loss experience in this state in the preceding year.

Within two hundred forty days of the effective date of this article, the commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code, establishing procedures for the fair and appropriate evaluation and determination of the past loss experience and prospective or projected loss experience of insurers within and outside this state, actual past expenses incurred in this state and demonstrable prospective or projected expenses applicable to this state.

(b) Within one hundred eighty days of the effective date of this article, the commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code, establishing procedures whereby each insurer providing five percent or more of the malpractice insurance coverage in this state annually shall submit to the commissioner the following information:
(1) The number of claims filed per category;
(2) The number of civil actions filed;
(3) The number of civil actions compromised or settled;
(4) The number of verdicts in civil actions;
(5) The number of civil actions appealed;
(6) The number of civil actions dismissed;
(7) The total dollar amount paid in claims compromised or settled;
(8) The total dollar amount paid pursuant to verdicts in civil actions;
(9) The number of claims closed without payment and the amount held in reserve for all such claims;
(10) The total dollar amount expended for loss adjustment expenses, commissions and brokerage expenses;
(11) The total dollar amount expended in defense and litigation of claims;
(12) The total dollar amount held in reserve for anticipated claims;
(13) Net profit or loss;
(14) Investment and other income on net realized capital gains and loss reserves and unearned premiums;
and
(15) The number of malpractice insurance policies canceled for reasons other than nonpayment of premiums.

The commissioner shall establish in such rules methods of allocating investment and other income among capital gains, loss reserves, unearned premiums and other assets if an insurer does not separately account for and allocate such income.

Any insurer who fails to submit any and all such information to the commissioner as required by this
subsection in accordance with the regulations promulgated hereunder shall be fined ten thousand dollars for each of the first five such failures per year and shall be fined one hundred thousand dollars for the sixth and each subsequent such failure per year.

(c) Beginning in the year one thousand nine hundred eighty-six, the commissioner shall report annually during the month of November to the joint standing committee on the judiciary the following information pertaining to each insurer providing five percent or more of the malpractice insurance coverage in this state:

(1) The loss experience within the state during the preceding calendar year;

(2) The rules, rates and rating plans in effect on the date of such report;

(3) The investment portfolio, including reserves, and the annual rate of return thereon; and

(4) The information submitted to the commissioner pursuant to the regulations promulgated by authority of subsection (b) of this section.

ARTICLE 20C. CANCELLATION AND NONRENEWAL OF MEDICAL MALPRACTICE 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.

No insurer once having issued or delivered a policy providing malpractice insurance in this state shall cancel such policy, except for one or more of the following reasons:

(a) The named insured fails to discharge any of his obligations to pay premiums for such policy or any installment thereof within a reasonable time of the due date;

(b) The policy was obtained through material
misrepresentation;
(c) The insured violates any of the material terms and
conditions of the policy;
(d) The insured's experiences render him an increased
risk;
(e) The unavailability of reinsurance, upon sufficient
proof thereof being supplied to the commissioner.
Any purported cancellation of a policy providing
malpractice insurance attempted in contravention of
this section shall be void.
§33-20C-3. Insurer to specify reasons for cancellation.
In every instance in which a policy or contract of
malpractice insurance is canceled by the insurer, the
insurer or his duly authorized agent shall cite within the
written notice of the action the allowable reason in
section two of this article for which such action was
taken and shall state with specificity the circumstances
giving rise to the allowable reason so cited. The notice
of the action shall further state that the insured has a
right to request a hearing pursuant to section five of this
article within thirty days.
§33-20C-4. Notice period for cancellation; sixty day notice
required for nonrenewal.
(a) No insurer shall fail to renew a policy or contract
providing malpractice insurance unless written notice of
such nonrenewal is forwarded to the insured by certified
mail, return receipt requested, not less than sixty days
prior to the expiration date of such policy.
(b) No insurer shall cancel a policy or contract
providing malpractice insurance during the term of
such policy unless written notice of such cancellation is
forwarded to the insured by certified mail, return
receipt requested, not more than thirty days after the
reason for such cancellation, as provided in section two
of this article, arose or occurred or the insurer learned
that it arose or occurred and not less than thirty days
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.
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, liability against and among all defendants which bear less than twenty-five percent of the negligence attributable to all defendants.

17 (c) Each defendant against whom a judgment of joint and several liability is entered in a medical professional liability action pursuant to subsection (b) of this section is liable to each plaintiff for all or any part of the total dollar amount awarded regardless of the percentage of negligence attributable to him. A right of contribution exists in favor of each defendant who has paid to a plaintiff more than the percentage of the total dollar amount awarded attributable to him relative to the percentage of negligence attributable to him. The total amount of recovery for contribution is limited to the amount paid by the defendant to a plaintiff in excess of the percentage of the total dollar amount awarded attributable to him relative to the percentage of negligence attributable to him. No right of contribution exists against any defendant who entered into a good faith settlement with the plaintiff prior to the jury’s report of its findings to the court or the court’s findings as to the total dollar amount awarded as damages.

36 (d) Where a right of contribution exists in a medical professional liability action pursuant to subsection (c) of this section, the findings of the court or jury as to the percentage of negligence and liability of the several defendants to the plaintiff shall be binding among such 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 first extraordinary session of the Legislature, 1986, shall be effective at the same time that the provisions of Enrolled Senate Bill 714, enacted during the Regular session, 1986, become effective, and the provisions of said House Bill 149 shall be deemed to amend the provisions of Enrolled Senate Bill 714. The provisions of this article shall not apply to injuries which occur before the effective date of said Enrolled Senate Bill 714.

1 If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are 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.


§8-19-18. 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.

Subject to and in accordance with the provisions of this article, any municipality may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, a waterworks system, or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality without the consent of the governing body of
13 such other municipality.
14 When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.
15 When used in this article, the term "electric power system" means a system or facility which produces electric power in its entirety or provides for the distribution of electric power for local consumption and use or for distribution and resale or any combination thereof, or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and all other facilities necessary, appropriate, useful or convenient or incidental in connection with or to an electric power supply system.

PART IV. REVENUE BOND FINANCING.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

1 Whenever a municipality shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance, provide for the issuance of revenue bonds under the provisions of this article, which ordinance shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality may by ordinance specify. All such bonds and the interest thereon, and all properties and revenues and
income derived from such waterworks or electric power system, shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof. Such bonds shall bear interest at a rate per annum set by the municipality, payable at such times, and shall be payable as to principal at such times, not exceeding fifty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance providing for their issuance. Unless the governing body of the municipality shall otherwise determine, such ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance authorizing the issuance of said bonds.

§8-19-8. Lien of bondholders; deeds of trust; security agreements; priority of liens.

Unless the governing body shall otherwise determine in the ordinance authorizing the issuance of bonds under this article, there shall be and there is hereby created and granted a statutory mortgage lien upon the waterworks or electric power system so acquired, constructed, established,
equipped, extended or improved from the proceeds of bonds hereby authorized to be issued, which shall exist in favor of the holder of said bonds and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such waterworks or electric power system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality in acquiring an existing waterworks system or in improving an existing waterworks or electric power system may provide that financing therefor may be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section six hereof. Any revenue bonds so issued to provide financing for such an existing waterworks or for any improvements to an existing waterworks or electric power system may be secured by a mortgage or deed of trust upon and security interest in the property so acquired or improved or any other interest of the municipality in property related thereto as determined by the municipality in the ordinance authorizing the issuance of such revenue bonds; and in such event the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of mortgages or deeds of trust on real property and security interests in personal property. Such mortgage or deed of trust, upon its recordation, shall have priority over all other liens or encumbrances, however created or arising, on the property covered by such mortgage or deed of trust, to the same extent and for the same amount as if the municipality were obligated to pay the full amount secured by such mortgage or deed of trust immediately upon the recordation of such mortgage or deed of trust and remained so obligated until the obligations secured are fully discharged.

PART V. GRANTS, LOANS, ADVANCES AND AGREEMENTS; CUMULATIVE AUTHORITY.


As an alternative to, or in conjunction with, the issuance of revenue bonds authorized by this article, any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances
evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, or otherwise enter into agreements, including, but not limited to, agreements of indemnity, assurance or guarantee with respect to, and for the purpose of financing part or all of, the cost of acquisition, construction, establishment, extension or equipment of waterworks systems and the construction of additions, betterments and improvements to existing waterworks systems or to existing electric power systems, and for the other purposes herein authorized, from or with any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, or the municipality's financial obligations contained in such other agreements, which need not bear interest, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of or proceeds from the said waterworks system or electric power system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and may be secured in the manner provided in sections eight, nine and sixteen of this article to secure bonds issued under the provisions of this article, but shall not otherwise be subject to the requirements of sections eleven and twelve of this article, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance or agreement be a general obligation of the municipality and such loans or temporary advances or agreements, including the interest thereon, shall be paid solely from the sources 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.

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to a waterworks system or for the construction of any additions, betterments, improvements, repairs, maintenance or operation of or to an existing electric power system as herein provided and for the issuance and sale of the bonds or the alternative methods of financing by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds or the alternative methods of financing under the provisions of this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds or the alternative methods of financing shall be required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the state department of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto.

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.

Any member who has attained or attains age sixty years and has five or more years of credited service in force, at least one year of which he was a contributing member of the retirement system, may retire upon his written application filed with the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof he desires to be retired: Provided, That on and after the first day of June, one thousand nine hundred eighty-six, any person who becomes a new member of this retirement system shall, in qualifying for retirement hereunder, have five or more years of service, all of which years shall be actual, contributory ones. Upon retirement, the member shall receive an annuity provided for in section twenty-two of this article.

§5-10-21. Deferred retirement and early retirement.

(a) Any member, who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his attainment of age sixty years, for any reason except his disability retirement or death, shall be entitled to an annuity computed according to section twenty-two of this article, as the said section was in force as of the date of his said separation from the employ of a participating public employer: Provided, That he does not withdraw his accumulated contributions from the members' deposit fund. His said annuity shall begin the first day of the calendar month next following the month in which his application for same is filed with the board of trustees on or after his attainment of age sixty-two years.
(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has ten or more years of credited service in force and who has attained age fifty-five as of the date of his separation may, prior to the effective date of his retirement, but not thereafter, elect to receive the actuarial equivalent of his deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his date of separation and his attainment of age sixty-two years and payable throughout his life.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has twenty or more years of credited service in force, may elect to receive the actuarial equivalent of his deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his fifty-fifth birthday and his attainment of age sixty-two years and payable throughout his life.

(d) Notwithstanding any of the other provisions of this section or of this article and pursuant to regulations promulgated by the board, any member who has thirty or more years of credited service in force, at least three of which are contributing service, and who elects to take early retirement, which for the purposes of this subsection shall mean retirement prior to age sixty, whether an active employee or a separated employee at the time of application, shall be entitled to the full computation of annuity according to section twenty-two of this article, as the said section was in force as of the date of retirement application, but with the reduced actuarial equivalent of the annuity the member would have received if his benefit had commenced at age sixty when he would have been entitled to full computation of benefit without any reduction.

(e) Notwithstanding any of the other provisions of this section or of this article, any member of the retirement system may retire with full pension rights, without reduction of benefits, if such member is at least fifty-five years of age and the sum of his or her age plus years of 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 be terminated on the date indicated but no governmental entity or program shall be terminated under this article unless a performance audit has been conducted of such entity or program, except as authorized under section fourteen of this article:

2. (1) On the first day of July, one thousand nine hundred eighty-one: Judicial council of West Virginia; geological and economic survey commission; motor vehicle certificate appeal board; child welfare licensing board.

3. (2) On the first day of July, one thousand nine hundred eighty-two: Ohio River basin commission; commission on postmortem examination; state commission on manpower, training and technology.

4. (3) On the first day of July, one thousand nine hundred eighty-three: Anatomical board; economic opportunity advisory committee; community development authority board.

5. (4) On the first day of July, one thousand nine hundred eighty-four: The following programs of the department of natural resources: Rabies control, work incentive program; West Virginia alcoholic beverage control licensing advisory board.

6. (5) On the first day of July, one thousand nine hundred
eighty-five: Beautification commission; labor management advisory council.

(6) On the first day of July, one thousand nine hundred eighty-six: Health resources advisory council.

(7) On the first day of July, one thousand nine hundred eighty-seven: The geological and economic survey; the commission on uniform state laws; West Virginia health care cost review authority; department of labor; civil service commission advisory board; council of finance and administration; motorcycle safety standards and specifications board; oil and gas inspectors' examining board; division of archives and history, department of culture and history; and the public employees insurance board.

(8) On the first day of July, one thousand nine hundred eighty-eight: Veteran's council; labor management relations board; board of investments; records management and preservation advisory committee; minimum wage rate board; Ohio River valley water sanitation commission; southern regional education board; department of corrections; board of regents; commission on mass transportation.

(9) On the first day of July, one thousand nine hundred eighty-nine: Mental retardation advisory committee; interagency committee on pesticides; commission on charitable organizations; board of school finance; veteran's affairs advisory council; emergency medical services advisory council; pesticides board of review; reclamation commission; information system advisory commission; board of social work examiners.

(10) On the first day of July, one thousand nine hundred ninety: Consumer affairs advisory council; savings and loan association; forest industries industrial foundation; U.S. geological survey program within the department of natural resources; drivers' license advisory board; the following divisions or programs of the department of agriculture: Soil conservation committee, rural resource division, meat inspection program; women's commission; office of workers' compensation commissioner.

(11) On the first day of July, one thousand nine hundred ninety-one: State advisory council of the department of employment security; department of human services; oil
and gas conservation commission.

(12) On the first day of July, one thousand nine hundred ninety-two: State water resources board; water resources division, department of natural resources; state board of risk and insurance management; West Virginia's membership in the interstate commission on the Potomac River basin; board of banking and financial institutions; state building commission; the capitol building and grounds preservation commission; the public service commission: Provided, That in the case of the public service commission, the performance and fiscal audit required by this article shall be completed and transmitted to the joint committee on government and finance on or before the first day of July, one thousand nine hundred ninety-one, in order that the joint committee or its designated subcommittee may review the audit pursuant to the provisions of section 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.]
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 restrain 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-c, 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.


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.


§11-10-12. Liens; release; subordination; foreclosure.


§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.
The tax commissioner shall administer and enforce each tax to which this article applies and, in connection therewith, shall prescribe all necessary forms. The tax commissioner may make all needful rules and regulations for the taxes to which this article applies as provided in the state administrative procedures act in chapter twenty-nine-a of this code: Provided, That all rules and regulations of the tax commissioner presently in effect on the effective date of this article shall remain in full force and effect until amended or repealed by the tax commissioner in the manner prescribed by law.

§11-10-5a. Investigations.

For the purpose of ascertaining the correctness of any tax return or assessment and for the purpose of making an estimate of any taxpayer's liability for tax administered under this article, and for the further purpose of conducting the hearings provided for in section nine or nine-a of this article, the tax commissioner shall have the power to examine or cause to be examined, by any agent or representative designated by the tax commissioner, any books, papers, records, memoranda, inventory or equipment bearing upon the matters required to be included in the tax return, may make test checks of tax yield, and may require the attendance of the person rendering the tax return or the attendance of any other person having knowledge of the matters contained therein and may take testimony and may require material proof with power to administer oath to such person or persons.

§11-10-5b. Subpoena and subpoena duces tecum.

(a) Power to issue. — For the efficient administration of the powers vested in the tax commissioner by the preceding section, and to facilitate determination or collection of any tax under this article, the tax commissioner, or his delegate, shall have the power to issue subpoenas and subpoenas duces tecum, in the name of the state tax department, and compel the attendance of witnesses and the production of books, papers, records, documents and testimony at the time and place specified. The tax commissioner, or his delegate, may exercise such power, in the name of the state tax department, upon request of any person who is a party
in any hearing to be held under the provisions of this article, for purposes of such hearing.

(b) *Service.* — Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof, by either personal service made by any person over eighteen years of age, or by registered or certified mail, but a return receipt signed by the person to whom subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail. Any party requesting a subpoena or subpoena duces tecum is responsible for service thereof and payment of any fee for such service. Service of other subpoenas and subpoenas duces tecum shall be the responsibility of the tax commissioner or his delegate. Any person, except a person in the employ of the state tax department, or any party, who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.

(c) *Fees.* — Fees for the attendance of witnesses subpoenaed shall be the same as for witnesses before the circuit courts of this state. All such fees shall be paid by the tax commissioner if the subpoena or subpoena duces tecum was issued, without the request of an interested party, at the insistence of the state tax department. All such fees related to any subpoena or subpoena duces tecum issued at the request of a party to an administrative hearing shall be paid by the party who asked that such subpoena or subpoena duces tecum be issued. All requests by interested parties for issuance of subpoena or subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(d) *Motion to quash.* — Upon motion made promptly, and in any event before the time specified in a subpoena or subpoena duces tecum for compliance therewith, the circuit court of the county in which the hearing is to be held or the circuit court of the county in which the person upon whom any such subpoena or subpoena duces tecum was served resides, has his or its principal place of business or is employed, or the circuit court of the county in which any such subpoena or subpoena duces tecum was served, or the judge of any such circuit court in vacation, may grant any
relief with respect to any such subpoena or subpoena duces tecum which any such circuit court, under the "West Virginia Rules of Civil Procedure for Trial Courts of Record," could grant, and for any of the same reasons, with respect to any such subpoena or subpoena duces tecum issued from any such circuit court.

(e) Enforcement of compliance. — In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the circuit court of Kanawha County or of the county in which such person resides, has his or its principal place of business or is employed, or the judge thereof in vacation, upon application by the tax commissioner, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court for a refusal to testify therein.

(f) Testimony under oath. — Witnesses subpoenaed under this section shall testify under oath or affirmation.

§11-10-5c. Returns by tax commissioner.

If any person fails to file any return required by this article or any article administered by this article, at the time required by law or by regulation made under authority of law, or makes and files willfully or otherwise, a false or fraudulent return, the tax commissioner may proceed to make such return from any information available to him, whether obtained through testimony or otherwise.

§11-10-5d. Confidentiality and disclosure of returns and return information.

(a) General rule. — Except when required in an official investigation by the tax commissioner into the amount of tax due under any article administered under this article or in any proceeding in which the tax commissioner is a party before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in subsections (d) through (m), it shall be unlawful for any officer or employee of this state to divulge or make known in any manner the tax return, or any part thereof, of any
person or disclose information concerning the personal
affairs of any individual or the business of any single firm or
corporation, or disclose the amount of income, or any
particulars set forth or disclosed in any report, declaration
or return required to be filed with the tax commissioner by
any article of this chapter imposing any tax administered
under this article or by any rule or regulation of the tax
commissioner issued thereunder, or disclosed in any audit
or investigation conducted under this article.

(b) Definitions. — For purposes of this section:

(1) Background file document. — The term
“background file document,” with respect to a written
determination, includes the request for that written
determination, any written material submitted in support
of the request and any communication (written or
otherwise) between the state tax department and person
outside the state tax department in connection with the
written determination received before issuance of the
written determination.

(2) Disclosure. — The term “disclosure” means the
making known to any person in any manner whatsoever a
return or return information.

(3) Inspection. — The terms “inspection” and
“inspected” mean any examination of a return or return
information.

(4) Return. — The term “return” means any tax or
information return or report, declaration of estimated tax,
claim or petition for refund or credit, or petition for
reassessment that is required by, or provided for, or
permitted, under the provisions of this article (or any article
of this chapter administered under this article) which is
filed with the tax commissioner by, on behalf of, or with
respect to any person, and any amendment or supplement
thereof, including supporting schedules, attachments, or
lists which are supplemental to, or part of, the return so
filed.

(5) Return information. — The term “return
information” means:

(A) A taxpayer's identity; the nature, source or amount
of his income, payments, receipts, deductions, exemptions,
credits, assets, liabilities, net worth, tax liability, tax
withheld, deficiencies, over assessments, or tax payments,
whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the tax commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) or by any person under the provisions of this article (or any article of this chapter administered under this article) for any tax, additions to tax, penalty, interest, fine, forfeiture, or other imposition, or offense; and

(B) Any part of any written determination or any background file document relating to such written determination. "Return information" does not include, however, data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of this code, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards.

(6) Tax administration. — The term "tax administration" means:

(A) The administration, management, conduct, direction and supervision of the execution and application of the tax laws or related statutes of this state, and the development and formulation of state tax policy relating to existing or proposed state tax laws, and related statutes of this state, and

(B) Includes assessment, collection, enforcement, litigation, publication and statistical gathering functions under the laws of this state.

(7) Taxpayer identity. — The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number, or a combination thereof.

(8) Taxpayer return information. — The term "taxpayer return information" means return information as defined in paragraph (5), above, which is filed with, or furnished to, the tax commissioner by or on behalf of the taxpayer to whom such return information relates.

(9) Written determination. — The term "written determination" means a ruling, determination letter, technical advice memorandum or letter or administrative
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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
which this state, the United States or such agency is or may be a party.

Such inspection or disclosure shall be solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(2) Application of order. — Any United States attorney, any special prosecutor appointed under Section 593 of Title 28, United States Code, or any attorney in charge of a United States justice department criminal division organized crime strike force established pursuant to Section 510 of Title 28, United States Code, may authorize an application to a circuit court judge or magistrate, as appropriate, for the order referred to in subdivision (1). Any prosecuting attorney of this state may authorize an application to a circuit court judge of this state for the order referred to in subdivision (1). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that:

(A) There is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(B) There is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and

(C) The return or return information is sought exclusively for use in a state or federal criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(3) The tax commissioner shall not disclose any return or return information under subdivision (1) if he determines and certifies to the court that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(f) Disclosure to person having a material interest. — The tax commissioner may, pursuant to legislative regulations promulgated by him, and upon such terms as he may require, disclose a return or return information to a person having a material interest therein: Provided, That such disclosure shall only be made if the tax commissioner determines, in his discretion, that such disclosure would not seriously impair administration of this state's tax laws.

(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
taxpayer appeals the administrative decision to circuit
court or waives in writing his rights to confidentiality, any
identifying characteristics or facts about the taxpayer shall
be omitted or modified to such an extent so as to not disclose
the name or identity of the taxpayer.

(1) Release of taxpayer information.

(1) If the tax commissioner believes that enforcement of
the tax laws administered under this article will be
facilitated and enhanced thereby, he shall disclose, upon
request, the names and address of persons:
(A) Who have a current business registration certificate.
(B) Who are licensed employment agencies.
(C) Who are licensed collection agencies.
(D) Who are licensed to sell drug paraphernalia.
(E) Who are distributors of gasoline or special fuel.
(F) Who are contractors.
(G) Who are transient vendors.
(H) Who are authorized by law to issue a sales or use tax
exemption certificate.
(I) Who are required by law to collect sales or use taxes.
(J) Who are foreign vendors authorized to collect use
tax.
(K) Whose business registration certificate has been
suspended or canceled or not renewed by the tax
commissioner.
(L) Against whom a tax lien has been recorded under
section twelve of this article (including any particulars
stated in the recorded lien).
(M) Against whom criminal warrants have been issued
for a criminal violation of this state's tax laws.
(N) Who have been convicted of a criminal violation of
this state's tax laws.
(m) Disclosure of return information to office of child
advocate.

(1) State return information. — The tax commissioner
may, upon written request, disclose to the director of the
office of child advocate created by article two, chapter
forty-eight-a of this code:
(A) Available return information from the master files
of the tax department relating to the social security account
number, address, filing status, amounts and nature of
income, and the number of dependents reported on any
return filed by or with respect to, any individual with respect to whom child support obligations are sought to be enforced, and

(B) Available state return information reflected on any state return filed by, or with respect to any individual described in subparagraph (A), relating to the amount of such individual's gross income, but only if such information is not reasonably available from any other source.

(2) Restrictions on disclosure. — The tax commissioner shall disclose return information under subdivision (1) only for purposes of, and to the extent necessary in, collecting child support obligations from, and locating individuals owing such obligations.

§11-10-5e. Service of notice.

1 Notices of assessments and administrative decisions shall be served upon the taxpayer either by personal or substituted service or by certified mail. Service of notice by personal or substituted service shall be valid if made by any method authorized by Rule 4 of the West Virginia Rules of Civil Procedure. Service of notice by certified mail shall be valid if accepted by the taxpayer, or if addressed to and mailed to the taxpayer's usual place of business or usual place of abode or last known address and accepted by any officer, partner, employee, spouse or child of the taxpayer over the age of eighteen. Any notice addressed and mailed in the above manner and accepted by any person, shall be presumed to be accepted by such person unless proven otherwise by the taxpayer. Any notice addressed and mailed in the above manner, and which is refused or not claimed, may then be served by regular mail if such notice is subsequently mailed by first class mail, postage prepaid, to the same address; and date of posting in the United States mail shall be the date of service.

§11-10-5f. Timely filing and paying.

(a) Delivery in person. — If any return, claim, statement or other document required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date, is delivered in person on or before such date to the tax commissioner, or the appropriate division or officer of the tax department, at Charleston, West Virginia, during normal business hours of the tax
department, it shall be timely filed: Provided, That the tax
commissioner may authorize such delivery to be made to his
agent at such other location or locations in this state, as he
may from time to time prescribe.

(b) Timely mailing. — If any return, claim, statement or
other document, required to be filed, or any payment
required to be made within a prescribed period or on or
before a prescribed date under authority of this article or
the provisions of any article of this chapter imposing any
tax administered under this article, is, after such period or
such date, delivered by United States mail to the tax
commissioner or the state tax department, the date of the
United States postmark stamped on the cover in which such
return, claim, statement, or other document or payment is
mailed shall be deemed to be the date of delivery or the date
of payment, as the case may be, provided the following
mailing requirements are met:

(1) The postmark date falls within the prescribed period
or on or before the prescribed date for filing (including any
extension granted for such filing) of the return, claim,
statement or other document, or for making the payment
(including any extension granted for such payment); and

(2) The return, claim, statement, other document or
payment was, within the time prescribed in subparagraph
(1), deposited in the mail in the United States in an envelope
or other appropriate wrapper, postage prepaid, properly
addressed to the tax commissioner or the state tax
department.

(c) Postmarks. — This section shall apply in the case of
postmarks not made by the United States postal service
only if and to the extent provided by rules or regulations
prescribed by the tax commissioner.

(d) Registered and certified mailing. — For purposes of
this section, if any return, claim, statement, or other
document or payment is sent by United States registered or
certified mail, the date of registration or certification shall
be deemed the postmark date.

(e) Last date for filing or payment. — The last date for
timely filing or timely making payment shall include any
extension of time authorized by law or regulation and any
extension of time granted in writing by the tax
commissioner.
§11-10-5g. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.

When the last day prescribed under authority of this article or any article of this chapter imposing any tax administered under this article for performing any act falls on Saturday, Sunday or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; and the term "legal holiday" means a legal holiday in this state.

§11-10-5h. Enforcement proceedings.

The enforcement of any of the collection provisions of this article in any of the courts of this state shall be under the exclusive jurisdiction of the tax commissioner. The tax commissioner may, at his request, be represented in any such collection civil action by the attorney general, the prosecuting attorney of any county in which action is instituted or by any attorney permanently employed by the tax commissioner and designated by the attorney general to be a special assistant attorney general. In all other court proceedings on appeals of administrative decisions of the tax commissioner, the tax commissioner shall be represented by the attorney general. Whenever a prosecuting attorney represents the tax commissioner in civil collection actions or the like, such prosecuting attorney shall receive no fees or compensation in addition to the salary paid by the county for such office for services rendered.

§11-10-5i. Enforcement powers.

Any employee of the state tax department, so designated by the tax commissioner, and who shall have attended a course of instruction at the state police academy, or its equivalent, shall have all the lawful powers delegated to members of the department of public safety except the power to carry firearms to enforce the provisions of article nine of this chapter in any county or municipality of this state. Any such employee shall, before entering upon the discharge of his duties, execute a bond with security in the
sum of three thousand five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his duties, as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his office. The department of public safety, any county sheriff (or his deputy) or any municipal police officer, upon request by the tax commissioner, is hereby authorized to assist the tax commissioner in enforcing the provisions of article nine of this chapter and the criminal penalty provisions of this article or any article of this chapter administered under this article.

§11-10-5j. Liability for taxes withheld or collected.

Whenever any person is required by this article (or any article of this chapter administered by this article) to collect or withhold any tax from any person and to pay it over to the tax commissioner, the amount of tax so collected or withheld shall be deemed to be moneys held in trust for the state of West Virginia. The amount of such moneys shall be assessed, collected and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

§11-10-5k. Fractional parts of a cent.

In the payment of any tax administered by this article, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

§11-10-5l. Payment of estimated tax.

Payment of estimated tax or any installment thereof, shall be considered payment on account of the tax imposed by any article administered under this article for the taxable year.

§11-10-5m. Overpayment of installments.

In the case of tax payable in installments, if the taxpayer has paid, as an installment of the tax, more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid
installments, if any for the taxable year. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due for the taxable year, the overpayment shall be credited or refunded as provided in section fourteen of this chapter.

§11-10-5n. Payment by check or money order.

(a) Check or money order unpaid.

(1) Ultimate liability. — If a check or money order tendered in payment of taxes is not duly paid, the person by whom such check or money order was tendered shall remain liable for payment of the tax and for all legal penalties and additions thereto, to the same extent as if such check or money order had not been tendered.

(2) Liability of bank and others. — If any certified treasurer's or cashier's check (or other guaranteed draft) or any money order tendered for payment of taxes is not duly paid, the state of West Virginia shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check (or draft) upon all the assets of the financial institution on which it is drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of the assets in preference to any other claims whatsoever against such financial institution or issuer, except the necessary costs and expenses of administration and perfected liens that are prior in time.

(b) Bad check charge. — If any check or money order tendered in payment of any amount of tax, interest, additions to tax or penalties is not duly paid, then, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check, upon written notice and demand by the tax commissioner, in the same manner as tax, an amount equal to the service charge which the bank or other financial institution charged the state for each check returned to the tax commissioner because the account is closed or there are insufficient funds in the account.

§11-10-5o. Notice of fiduciary relationship.

(a) Rights and obligations of fiduciary. — Upon notice to the tax commissioner that any person is acting for another
person in a fiduciary capacity, such fiduciary shall assume
that power, rights, duties and privileges of such other
person in respect of any tax administered under this article
(except that the tax shall be collected from the estate of such
other person), until notice is given that the fiduciary
capacity has terminated.

(b) Notice. — Notice under this section shall be given in
accordance with regulations prescribed by the tax
commissioner.

§11-10-5p. Effective date of amendments.

Any amendment to any article administered under this
article shall first apply to a particular taxpayer for taxable
years beginning on or after the effective date of the act of
the Legislature containing such amendment, as determined
under article six, section thirty of the constitution of this
state, unless the language of the act provides a controlling
internal effective date provision.

§11-10-5q. Settlement agreements and compromises.

(a) Closing agreements authorized. — The tax
commissioner is authorized to enter into an agreement in
writing with any person relating to the liability of such
person (or of the person or estate for whom he acts) in
respect of any tax administered by the tax commissioner
under this article, for any taxable period.

(b) Finality of closing agreement. — If a closing
agreement is entered into by the tax commissioner, (within
such time as may be stated in such agreement, or later
agreed to) such agreement shall be final and conclusive, and
except upon a showing of fraud or malfeasance or
misrepresentation of a material fact:

(1) The matters so agreed upon shall not be reopened, or
the agreement modified by any officer, employee or agent of
this state; and

(2) In any civil action or administrative proceeding, the
closing agreement or any determination, assessment,
collection, payment, abatement, refund or credit made in
accordance therewith, shall not be annulled, modified, set
aside or disregarded.

(c) Compromises authorized. — The tax commissioner
may compromise all or part of any civil case arising under
the provisions of this article. In all such matters involving issues in respect of tax liability in controversy of fifteen thousand dollars or more for one or all of the years involved in such matter, claim or case, the tax commissioner shall seek the written recommendation of the attorney general before entering into such compromise. Any liability for tax (including any interest, additions to tax and penalties) may be compromised upon one or more, or both, of the following grounds:

(1) Doubt as to liability; or
(2) Doubt as to collectibility.

(d) Record of compromise. — Whenever a compromise is made by the tax commissioner under subsection (c), there shall be placed on file in the tax commissioner's office the opinion of the tax commissioner's legal counsel (with his reasons therefor) and any written recommendation of the attorney general received pursuant to subsection (c) above together with a statement of:

(1) The amount of tax assessed,
(2) The amount of interest, additions to the tax, or assessable penalty imposed by law on the person against whom the tax is assessed, and
(3) The amount actually paid in accordance with the terms of compromise.

Notwithstanding the foregoing provisions of this subsection (d), no such opinion shall be required with respect to the compromise of any civil case in which the amount of tax assessed (including any interest, additions to tax or assessable penalty) is less than one thousand dollars.

(e) Report to Legislature. — The tax commissioner shall submit to the Speaker of the House of Delegates, the President of the Senate and the legislative auditor a quarterly report summarizing the issues and amounts of liabilities contained in the agreements and compromises into which he has entered pursuant to this section. Such report shall be in a form which preserves the confidentiality of the identity of the taxpayers involved in such agreements and compromises. Notwithstanding any other provision of law to the contrary, the agreements and compromises entered into pursuant to this section shall be subject to audit, in their entirety, by the legislative auditor.
§11-10-5r. Technical assistance advisories.

(a) The tax commissioner may issue an informal technical assistance advisory to a person, upon written request, as to the position of his office on the tax consequences of a stated transaction or event, under existing statutes, rules or policies. However, after the issuance of an assessment to a taxpayer, a technical assistance advisory may not be issued to that taxpayer with respect to the issue or issues involved in the assessment.

(b) A technical assistance advisory shall have no precedential value except to the taxpayer who requests the advisory and then only for the specific transaction addressed in the technical assistance advisory, unless specifically stated otherwise in the advisory.

(c) Any modification of an advisory shall be prospective only.

(d) The tax commissioner may, in his discretion, promulgate rules prescribing guidelines and procedures for submission, issuance or denial of assistance, and disclosure of technical assistance advisory: Provided, That the tax commissioner shall not disclose a technical assistance advisory to any person other than the person who requested the advisory, or his authorized representative, without first deleting the name, address and other identifying details of the person to whom the technical assistance advisory was issued, unless that person executes a written waiver of confidentiality.

(e) The tax commissioner shall release copies of technical assistance advisories issued pursuant to this section to the public. Any identifying characteristics or facts about the taxpayer shall be omitted or modified in such technical assistance advisories to such an extent so as to not disclose the name or identity of the taxpayer.

§11-10-6. Mathematical or clerical errors; collection of balance due on return without remittance.

(a) Mathematical or clerical error. — When it appears to the tax commissioner that the taxpayer has made a mathematical error (including an overstatement of the credit for the amount paid as estimated tax), or clerical error, the tax commissioner shall correct such error and notify the taxpayer, in writing, of the deficiency or
overpayment in tax. The taxpayer shall have fifteen days after receipt of such notice within which to pay any such deficiency. If the taxpayer fails to pay such deficiency within fifteen days, the tax commissioner shall make an assessment of such deficiency in accordance with section seven and shall give the taxpayer written notice thereof.

(b) Collection of balance due. — If a taxpayer files a mathematically correct return which reflects a balance due of any tax administered under this article, and if full payment thereof has not been made, the tax commissioner shall notify the taxpayer, in writing, of the amount of tax, additions to tax, penalties or interest due. The taxpayer shall have fifteen days after receipt of such notice within which to make payment. If the taxpayer fails to make payment within such fifteen-day period, the tax commissioner shall proceed under section eleven of this article to collect the amount due.

(c) Certain terms defined. — For the purposes of this section:

(1) Mathematical or clerical error. — The term "mathematical or clerical error" means:

(A) An error in addition, subtraction, multiplication or division shown on any return;

(B) An incorrect use of any table provided by the tax commissioner with respect to any return if such incorrect use is apparent from the existence of other information on the return;

(C) An entry on a return of an item which is inconsistent with another entry of the same or another item on such return;

(D) An omission of information which is required to be supplied on the return to substantiate an entry on the return; and

(E) An entry on a return of a deduction or credit in an amount which exceeds a statutory limit, if such limit is expressed:

(i) As a specified monetary amount, or

(ii) As a percentage, ratio, or fraction, and if the items entering into the application of such limit appear on such return.

(2) Return. — The term "return" includes any return, statement, schedule, or list, and any amendment or
supplement thereto filed with respect to any tax administered under this article.

§11-10-7. Assessment.

(a) General. — If the tax commissioner believes that any tax administered under this article has been insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax, or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability and make an assessment therefor.

(b) Jeopardy assessments. — If the tax commissioner believes that the collection of any tax administered under this article will be jeopardized by delay, he shall thereupon make an assessment of tax, noting that fact upon the assessment. The amount assessed shall immediately be due and payable. Unless the taxpayer against whom a jeopardy assessment is made posts the required security and petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such assessment shall become final: Provided, That upon written request of the taxpayer made within such twenty-day period, showing reasonable cause therefor, the tax commissioner may grant an extension of time not to exceed thirty additional days within which such petition may be filed. If a taxpayer against whom a jeopardy assessment has been made petitions for reassessment or requests an extension of time to file a petition for reassessment, the petition or request shall be accompanied by remittance of the amount assessed or such security as the tax commissioner may deem necessary to ensure compliance with the applicable provisions of this chapter. If a petition for reassessment is timely filed, and the amount assessed has been remitted, or such other security posted, the provisions for hearing, determination and appeal set forth in sections nine and ten shall then be applicable.

(c) Amendment of assessment. — The tax commissioner may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever he ascertains that such assessment is improper or incomplete in any material respect.
(d) **Supplemental assessment.** — The tax commissioner may, at any time within the period prescribed for assessment, make a supplemental assessment whenever he ascertains that any assessment is imperfect or incomplete in any material respect.

(e) **Address for notice of assessment.**

1. **General rule.** — In the absence of notice to the tax commissioner under section five-o of the existence of a fiduciary relationship, notice of assessment, if sent by certified mail or registered mail to the taxpayer at his last known address, shall be sufficient even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

2. **Joint income tax return.** — In the case of a joint income tax return filed by a husband and wife, such notice of assessment may be a single notice, except that if the tax commissioner has been notified by either spouse that separate residences have been established, then in lieu of a single notice, a duplicate original of the joint notice shall be sent by certified or registered mail to each spouse at his last known address.

3. **Estate tax.** — In the absence of notice to the tax commissioner of the existence of a fiduciary relationship, notice of assessment of a tax imposed by article eleven of this chapter, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, by registered or certified mail, shall be sufficient for purposes of this article and article eleven of this chapter.

§11-10-7a. **Abatement.**

(a) **General rule.** — The tax commissioner is authorized to abate the assessment of any tax or any liability in respect thereto which:

1. **Is void,** or
2. **Is assessed after the expiration of the period of limitation properly applicable thereto,** or
3. **Is voidable:** Provided, That no claim for abatement shall be filed by a taxpayer under this subdivision if the assessment has become final.

(b) **Small tax balances.** — The tax commissioner is authorized to abate the unpaid portion of an assessment of
any tax, or any liability in respect thereof, which has become final, if the tax commissioner determines under uniform rules promulgated by him that the administration and collection costs involved would not warrant collection 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.

(a) Notice of assessment. — The tax commissioner shall give the taxpayer written notice of any assessment or amended or supplemental assessment made pursuant to this article. The assessment or amended or supplemental assessment, as the case may be, shall become final and conclusive of the liability of the taxpayer and not subject to either administrative or judicial review under the provisions of sections nine or nine-a, and ten of this article unless the taxpayer to whom a notice of assessment or amended or supplemental assessment, is given, shall within sixty days after service thereof (except in the case of jeopardy assessments, as to which the time for filing a petition is specified in section seven) either:

(1) Petition for reassessment. — Personally or by certified mail, files with the tax commissioner a petition in writing, verified under oath by the taxpayer or his duly authorized agent having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for such objections; or

(2) Payment of assessment. — Personally or by certified mail, remits to the tax commissioner the total amount of the assessment or amended or supplemental assessment, including such additions to tax and penalties as may have been assessed and the amount of interest due.

(b) Finality of assessment. — The amount of an assessment or amended or supplemental assessment shall be due and payable on the day following the date upon which the assessment or amended or supplemental assessment becomes final. Payment of the amount of the assessment, or amended or supplemental assessment, as provided in subdivision (2), above, within sixty days after
service of notice of such assessment shall not prohibit or
otherwise bar the taxpayer from filing a claim for refund or
credit under the provisions of section fourteen of this article
within the time prescribed therein for the filing of a claim
for refund or credit.

(c) Payment of assessment after petition filed. — A
taxpayer who has timely filed a petition for reassessment
may, at any time prior to issuance of the tax commissioner's
administrative decision under section nine or nine-a of this
article, pay under protest the amount of the assessment.
Upon such payment, the contested case shall thereafter be
treated for all purposes as a petition for refund: Provided,
That if payment is made after the administrative hearing
under section nine or nine-a of this article has commenced
or concluded, a new hearing shall not be held, but the record
thereof shall be properly amended by the tax commissioner
to show that the amount assessed has been paid under
protest by the taxpayer and that the petition for
reassessment previously filed under this section is now to be
treated as a petition for refund filed under section fourteen
of this article.

(d) Effective date. — This section, as amended, shall
apply to all assessments (including amended and
supplemental assessments) which are issued on or after the
first day of July, one thousand nine hundred eighty-six,
and to all assessments issued prior to such effective date
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
section nine of this article, if the amount in dispute in any
petition for reassessment filed under section eight or in any
petition for refund or credit filed under section fourteen
does not exceed ten thousand dollars for any one taxable
year, then, at the option of the taxpayer and concurred in by
the tax commissioner before the hearing of the case,
proceedings in the case shall be conducted under this
section. Such proceedings shall be conducted in an informal
manner and in accordance with such rules of evidence and
rules of procedure as the tax commissioner may prescribe. A
decision, together with a brief summary of the reasons
therefor shall be issued by the tax commissioner.
(b) *Finality of decision.* — A decision entered in any case in which proceedings are conducted under this section shall not be subject to review, administrative or judicial, and shall not be treated as precedent for any other case.

(c) *Discontinuance of proceedings.* — At any time before commencement of the hearing held under this section, the taxpayer may unilaterally withdraw its election made under subsection (a); and at any time before a decision is issued under this section, the taxpayer may request or the tax commissioner, on his own motion, may order that further proceedings under this section in such case be discontinued because there are reasonable grounds for believing that the amount in dispute exceeds the amount described in subsection (a) of this section. Upon any such discontinuance, or change of election, a hearing shall be held in the same manner as other cases to which section nine of this article applies.

(d) *Amount of deficiency in dispute.* — For purposes of this section, the amount in dispute includes tax, additions to tax, additional amounts and penalties. It excludes interest.

§11-10-10. Appeals.

(a) *Right of appeal.* — A taxpayer may appeal the administrative decision of the tax commissioner issued under section nine or fourteen of this article, by taking an appeal to the circuit courts of this state within sixty days after being served with notice of the administrative decision.

(b) *Venue.* — The appeal may be taken in the circuit court of any county:

1. Wherein the activity taxed was engaged in; or
2. Wherein the taxpayer resides; or
3. Wherein the will of the decedent was probated or letters of administration granted; or
4. To the circuit court of Kanawha County.

(c) *Petition for appeal.* — The appeal proceeding shall be instituted by filing a petition with the circuit court, or the judge thereof in vacation, within the sixty-day period prescribed in subsection (a). The clerk of the circuit court shall, within ten days after date the petition is filed, serve the tax commissioner with a copy of the same by registered
or certified mail. This petition shall be in writing, verified under oath by the taxpayer, or his duly authorized agent, having knowledge of the facts, set forth with particularity the items of the administrative decision or the assessment objected to, together with the reasons for such objections.

(d) **Appeal bond.** — If the appeal is of any assessment for additional taxes (except a jeopardy assessment for which security in the amount thereof was previously filed with the tax commissioner), then within ninety days after the petition for appeal is filed, or sooner if ordered by the circuit court, the taxpayer shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in this state. These bonds shall be conditioned that the taxpayer shall perform the orders of the court. The penalty of this bond shall be not less than the total amount of tax, additions to tax, penalties and interest for which the taxpayer was found liable in the administrative decision of the tax commissioner. Notwithstanding the foregoing and in lieu of such bond, the tax commissioner, in his discretion upon such terms as he may prescribe, may upon a sufficient showing by the taxpayer, certify to the clerk of the circuit court that the assets of the taxpayer subject to the lien imposed by section twelve of this article, or other indemnification, are adequate to secure performance of the orders of the court.

(e) **Hearing of appeal.** — The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. In such appeal a certified copy of the tax commissioner's notice of assessment or amended or supplemental assessment and administrative decision thereon shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of those articles of this chapter to which this article is applicable. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of the court with the tax commissioner who shall then correct the assessment in accordance with the decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.

(a) General. — The tax commissioner shall collect the taxes, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable. In addition to all other remedies available for the collection of debts due this state, the tax commissioner may proceed by foreclosure of the lien provided in section twelve, or by levy and distraint under section thirteen.

(b) Prerequisite to final settlement of contracts with nonresident contractor; user personally liable.

(1) Any person contracting with a nonresident contractor subject to the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter, shall withhold payment, in the final settlement of such contract, of such sufficient amount, not exceeding six percent of the contract price, as will in such person's opinion be sufficient to cover such taxes, until the receipt of a certificate from the tax commissioner to the effect that the above referenced taxes imposed against the nonresident contractor have been paid or provided for.

(2) If any person shall fail to withhold as provided herein, such person shall be personally liable for the payment of all such taxes attributable to the contract, not to exceed six percent of the contract price. The same shall be recoverable by the tax commissioner by appropriate legal proceedings, which may include issuance of an assessment under this article.

(c) Prerequisite for issuance of certificate of dissolution or withdrawal of corporation. — The secretary of state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the tax commissioner to the effect that every tax administered under this article imposed against any such corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.

(d) Prerequisite to final settlement of contract with this state or political subdivision; penalty. — All state, county,
district and municipal officers and agents making contracts
on behalf of this state or any political subdivision thereof
shall withhold payment, in the final settlement of any such
contract, until the receipt of a certificate from the tax
commissioner to the effect that the taxes imposed by
articles thirteen, twenty-one and twenty-four of this
chapter against the contractor have been paid or provided
for. If the transaction embodied in such contract or the
subject matter of the contract is subject to county or
municipal business and occupation tax, then such payment
shall also be withheld until receipt of a release from such
county or municipality to the effect that all county or
municipal business and occupation taxes levied or accrued
against the contractor have been paid. Any official
violating this section shall be subject to a civil penalty of
one thousand dollars, recoverable as a debt in a civil action
brought by the tax commissioner.

(e) **Limited effect of tax commissioner’s certificates.** —
The certificates of the tax commissioner provided for in
subsections (b), (c) and (d) of this section shall not bar
subsequent investigations, assessments, refunds and
credits with respect to the taxpayer.

(f) **Payment when person sells out or quits business; liability of successor; lien.**

(1) If any person subject to any tax administered under
this article sells out his or its business or stock of goods, or
ceases doing business, any tax, additions to tax, penalties
and interest imposed by this article or any of the other
articles of this chapter to which this article is applicable
shall become due and payable immediately and such person
shall, within thirty days after selling out his or its business
or stock of goods or ceasing to do business, make a final
return or returns and pay any tax or taxes which may be
due. The unpaid amount of any such tax shall be a lien upon
the property of such person.

(2) The successor in business of any person who sells out
his or its business or stock of goods, or ceases doing
business, shall be personally liable for the payment of tax,
additions to tax, penalties and interest unpaid after
expiration of the thirty-day period allowed for payment:
**Provided, That if the business is purchased in an arms-
length transaction, and if the purchaser withholds so much
of the consideration for the purchase as will satisfy any tax, additions to tax, penalties and interest which may be due until the seller produces a receipt from the tax commissioner evidencing the payment thereof, the purchaser shall not be personally liable for any taxes attributable to the former owner of the business unless the contract of sale provides for the purchaser to be liable for some or all of such taxes. The amount of tax, additions to tax, penalties and interest for which the successor is liable shall be a lien on the property of the successor, which shall be enforced by the tax commissioner as provided in this article.

(g) **Priority in distribution of estate or property in receivership; personal liability of fiduciary.** — All taxes due and unpaid under this article shall be paid from the first money available for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, firm or corporation, in priority to all claims, except taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any trustee, receiver, administrator, executor or person charged with the administration of an estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.

(h) **Injunction.** — If the taxpayer fails for a period of more than sixty days to fully comply with any of the provisions of this article or of any other article of this chapter to which this article is applicable, the tax commissioner may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in this state until the taxpayer fully complies with the provisions of this article or any of such other articles. No bond shall be required of the tax commissioner in any action instituted under this subsection.

(i) **Costs.** — In any proceeding under this section, upon judgment or decree for the tax commissioner, he shall be awarded his costs.

(j) **Refunds; credits; right to offset.** — Whenever a taxpayer has a refund or credit due it for an overpayment of any tax, administered under this article, the tax
commissioner may reduce the amount of such refund or credit by the amount of any tax administered under this article, whether it be the same tax or any other tax, which is owed by the same taxpayer, and collectible as provided in subsection (a) of this section.

(k) Spouse relieved of liability in certain cases.

(l) In general. — Under regulations prescribed by the tax commissioner, if—

(A) A joint personal income tax return has been made for a taxable year,

(B) On such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,

(C) The other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and

(D) Taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement, then the other spouse shall be relieved of any liability for tax (including interest, additions to tax, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.

(2) Grossly erroneous items. — For purposes of this subsection, the term “grossly erroneous items” means, with respect to any spouse—

(A) Any item of gross income attributable to such spouse which is omitted from gross income, and

(B) Any claim of a deduction, credit, or basis by such spouse in an amount for which there is no basis in fact or law.

(3) Substantial understatement. — For purposes of this subsection, the term “substantial understatement” means any understatement (as defined in regulations prescribed by the tax commissioner) which exceed five hundred dollars.

(4) Understatement must exceed specified percentage of spouse’s income.

(A) Adjusted gross income of twenty thousand dollars or less. — If the spouse’s adjusted gross income for the preadjustment year is twenty thousand dollars or less, this subsec-
tion shall apply only if the liability described in subdivision
(1) is greater then ten percent of such adjusted gross income.

(B) Adjusted gross income of more than twenty
thousand dollars. — If the spouse's adjusted gross income
for the preadjustment year is more than twenty thousand
dollars, subparagraph (A) shall be applied by substituting
“twenty-five percent” for “ten percent”.

(C) Preadjustment year. — For purposes of this
paragraph, the term “preadjustment year” means the most
recent taxable year of the spouse ending before the date the
deficiency notice is mailed.

(D) Computation of spouse's adjusted gross income. —
If the spouse is married to another spouse at the close of the
preadjustment year, the spouse's adjusted gross income
shall include the income of the new spouse (whether or not
they file a joint return).

(E) Exception for omissions from gross income. — This
paragraph shall not apply to any liability attributable to the
omission of an item from gross income.

(5) Adjusted gross income. — For purposes of this
subsection, the term “adjusted gross income” means the
West Virginia adjusted gross income of the taxpayer,
determined under article twenty-one of this chapter.

§11-10-12. Liens, release; subordination; foreclosure.

(a) General. — Any tax, additions to tax, penalties or
interest due and payable under this article or any of the
other articles of this chapter to which this article is
applicable shall be a debt due this state. It shall be a
personal obligation of the taxpayer and shall be a lien upon
the real and personal property of the taxpayer.

(b) Duration of lien. — The lien created by this section
shall continue until the liability for the tax, additions to tax,
penalties and interest is satisfied or becomes unenforceable
by reason of lapse of time.

(c) Recordation. — The lien created by this section shall
be subject to the restrictions and conditions embodied in
article ten-c, chapter thirty-eight of this code and any
amendment made or which may hereafter be made thereto.

(d) Release or subordination. — The tax commissioner,
pursuant to rules or regulations prescribed by him, may
issue his certificate of release of any lien created pursuant
to this section when the debt is adequately secured by bond
or other security. He shall issue his certificate of release
when the debt secured has been satisfied. The certificate of
release shall be issued in duplicate. One copy shall be
forwarded to the taxpayer, and the other copy shall be
forwarded to the clerk of the county commission of the
county wherein the lien is recorded. The clerk of the county
commission shall record the release without payment of any
fee and such recordation shall constitute a release and full
discharge of the lien. The tax commissioner may issue his
certificate of release of any such lien as to all or any part of
the property subject to the lien, or may subordinate such
lien to any other lien or interest, but only if there is paid to
the state an amount not less than the value of the interest of
the state in such property, or if the interest of the state in
such property has no value.

(e) Foreclosure. — The tax commissioner may enforce
any lien created and recorded under this section, against
any property subject to such lien by civil action in the
circuit court of the county wherein such property is located,
in order to subject such property to the payment of the tax
secured by such lien. All persons having liens upon or
having any interest in the property shall be made parties to
such action. The court may appoint a receiver or
commissioner who shall ascertain and report all liens,
claims and interests in and upon the property, the validity,
amount and priority of each. The court shall, after notice to
all parties, proceed to adjudicate all matters involved
therein, shall determine the validity, amount and priorities
of all liens, claims and interests in and upon the property
and shall decree a sale of such property by the sheriff or any
commissioner to whom the action is referred, and shall
decree distribution of the proceeds of such sale according to
the findings of the court in respect to the interests of the
parties.

(f) Discharge of lien. — A sale of property against which
the state has a lien under this section, made pursuant to an
instrument creating a lien on such property, or made
pursuant to a statutory lien on such property, or made
pursuant to a judicial order to enforce any judgment in any
civil action, shall be made subject to and without disturbing
the state tax lien if the state tax lien was recorded more than
thirty days before such sale, unless:

(1) The tax commissioner is made a party to such civil action, or
(2) The tax commissioner is given notice of such sale in writing not less than fifteen days prior to sale, or
(3) The tax commissioner consents to such sale. Such notice shall contain the name of the owner of the property and the social security number or federal employer identification number of the owner.


(a) Authority of tax commissioner. — If any tax administered under this article is shown to be due on a return, it is required to be paid at the time the return is filed and if any portion of such tax is not so paid, or if an assessment of tax is made by the tax commissioner and notice thereof is given as required by this article and such assessment has become final and is not subject to administrative or judicial review, then, if any person liable to pay any tax administered under this article neglects or refuses to pay the same within fifteen days after notice and demand, it shall be lawful for the tax commissioner (or his delegate) to collect such tax (and such further sum as is sufficient to cover the expense of the levy) by levy upon all property and rights to property belonging to such person or on which there is a lien provided in this article, or any article administered under this article, for payment of the tax. If the tax commissioner makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be given by the tax commissioner (or his delegate) and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the fifteen-day period provided in this section.

(b) “Levy” defined. — The term “levy” as used in this section includes the power of distraint and seizure by any means. Except as otherwise provided in this section, a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the tax commissioner, or his delegate, may levy upon property or rights to property, he may seize and sell such property or rights to property, whether such property be real or personal, tangible or intangible.
(c) Successive seizures. — Whenever any property or a right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the state of West Virginia for which levy is made, the tax commissioner may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) Distress warrant. — The tax commissioner may issue a distress warrant to the sheriff of any county of this state, or to any officer or employee of the state tax department, commanding him to levy upon and sell any such property or rights to property subject to levy in accordance with the provisions of this article. A distress warrant shall be executed within sixty days from the date the warrant was issued. The sheriff shall return the warrant and any money collected to the tax commissioner within sixty-five days from the date the warrant was issued. The provisions of articles four, five and six, chapter thirty-eight of this code shall not apply to the issuance or execution of any distress warrant issued under this subsection.

(e) Requirement of notice before levy. —

(1) In general. — Levy may be made under subsection (a) upon the salary or wages or other property or rights to property of any person with respect to any unpaid tax only after the tax commissioner has notified such person in writing of his intention to make such levy.

(2) Ten-day requirement. — The notice required under subdivision (1) shall be given in person, or left at the dwelling or usual place of business of such person, or sent by certified mail to such person’s last known address, no less than ten days prior to the day of levy: Provided, That no notice need be given if the tax commissioner has made a finding under the last sentence of subsection (a) that collection of the tax is in jeopardy.

(3) Continuing levy on salary and wages. — The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time, at which time the tax commissioner shall promptly
release such levy and notify the person upon whom such 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 wearing apparel and school books that are necessary for the taxpayer or for members of his or her family.

3 (2) Fuel, provisions, furniture and personal effects. — If the taxpayer is the head of a family, so much of the fuel, provisions, furniture and personal effects in his household and of the arms for personal use, livestock and poultry of the taxpayer, as does not exceed one thousand five hundred dollars in value; if the taxpayer is an individual who is not the head of a household, this exemption shall not exceed one thousand dollars.

4 (3) Books and tools of a trade, business or profession. — So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate one thousand dollars in value.

5 (4) Unemployment benefits. — Any amount payable to an individual with respect to his or her unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, or of this state or any other state.

6 (5) Undelivered mail. — Mail, addressed to any person, which has not been delivered to the addressee.

7 (6) Annuity and pension payments. — Annuity or pension payments under any pension or retirement plan, including social security payments.

8 (7) Workers' compensation. — Any amount payable to an individual as workers' compensation (including any portion thereof payable with respect to dependents) under a workers' compensation law of the United States, or of this state or any other state.

9 (8) Judgments for support of minor children. — If the taxpayer is required by a judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his other minor children, so much of his or her salary, wages or other income as is necessary to comply with such judgment.

10 (9) Public assistance. — Any amount payable to any
person from a public assistance or relief fund created under
the law of the United States or of this state or of any other
state.

(10) Minimum exemption for wages, salary and other
income. — Any amount payable to or receivable by an
individual as wages or salary for services provided by an
employee to his or her employer, or as income derived from
other sources, during any period, to the extent that the total
of such amounts payable to or received by him or her during
such period does not exceed the applicable exempt amount
determined under subsection (d).

(11) Homestead. — If the taxpayer owns a homestead
located in this state, the first five thousand dollars thereof
shall be exempt from levy.

(b) Appraisal. — The officer seizing property of the type
described in subsection (a) shall appraise and set aside to
the owner the amount of such property declared to be
exempt. If the taxpayer objects at the time of the seizure to
the valuation fixed by the office making the seizure, the tax
commissioner shall summon three disinterested individuals
who shall make the valuation.

(c) No other property exempt. — Notwithstanding any
other law of this state, no property or rights to property
shall be exempt from levy other than property specifically
made exempt by subsection (a).

(d) Exempt amount of wages, salary or other income. —
(1) In the case of an individual who is paid or receives all
of his wages, salary and other income on a weekly basis, the
amount of the wages, salary and other income payable to or
receivable by the person during any week which is exempt
from levy under subdivision (1), subsection (a) shall be:

(A) Thirty times the state minimum wage per hour, plus
(B) Twenty-five dollars for each additional dependent
of the taxpayer.

§11-10-13b. Surrender of property subject to levy.

(a) Requirement. — Any person in possession of (or
obligated with respect to) property or rights to property
subject to levy upon which a levy has been made shall, upon
demand of the tax commissioner, surrender such property
or rights (or discharge such obligation) to the tax
commissioner, except such part of the property or rights as
is, at the time of such demand, subject to any prior
attachment, execution or levy.

(b) Enforcement of levy. —

(1) Extent of personal liability. — Any person in pos-
session of or obligated with respect to property subject
to levy upon which levy has been made, who fails or
refuses to surrender any property or rights to pro-

(2) Penalty for violation. — In addition to the personal
liability imposed by subdivision (1), if any person required
to surrender property or rights to property fails or refuses
to surrender the same without reasonable cause, such person
shall be liable for a money penalty equal to fifty percent of
the amount recovered under subdivision (1). No part of this
penalty shall be credited against the tax liability for the
collection of which such levy was made.

(c) Effect of honoring levy. — Any person in possession
of (or obligated with respect to) property or rights to
property subject to levy upon which levy has been made,
who upon demand by the tax commissioner, surrenders
such property or rights to property (or discharges such
obligation) to the tax commissioner, or who pays a liability
under subdivision (1), subsection (b) shall be discharged
from any obligation or liability to the delinquent
taxpayer with respect to such property or rights to
property arising from such surrender or payment.

(d) "Person" defined. — The term "person" as used in
substitution (a) includes an officer or employee of a
corporation or a member or employee of a partnership, who
as such officer, employee or member is under a duty to
surrender the property or rights to property or to discharge
the obligation.
§11-10-13c. Sale of seized property.

(a) Notice of seizure. — As soon as practicable after seizure of property, notice in writing shall be given by the tax commissioner to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the county where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such county, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) Notice of sale. — The tax commissioner may sell any property seized under section thirteen of this article. As soon as practicable after the seizure of the property, the tax commissioner shall give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notice of sale to be published as a Class II legal advertisement in some newspaper published or generally circulated within the county wherein such seizure is made, or the county where the property is located, the last date of publication being not less than five days prior to sale. This notice shall identify the property to be sold, and the date, time, place, manner and conditions of the sale thereof, all of which shall be at the discretion of the tax commissioner. The sale shall be conducted by public auction, or by public sale under sealed bids. Before the sale, the tax commissioner may determine a minimum price for which the property shall be sold, and if no person offers for such property at the sale, the amount of the minimum price, the property shall be declared to be purchased at such price for the state of West Virginia; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the tax commissioner shall take into account the expense of making the levy and sale.

(c) Sale of indivisible property. — If any property liable to levy is not divisible, so as to enable the tax commissioner by sale of a part thereof to raise the whole amount of the tax and expense of making the levy and sale, the whole of such property shall be sold. However, where the property sold is
co-owned or jointly-owned by the taxpayer and an innocent third party, the proceeds of sale shall be divided, based on the respective interests of the persons owning the property immediately prior to the levy and sale, and the proceeds attributable to the interest of the innocent owner or owners shall be distributed to them: Provided, That where the property to be sold is so co-owned or jointly-owned by an innocent third party, having no delinquent tax liability attempted to be collected under such levy and sale, such innocent party may petition the circuit court of the county in which the property is located for relief, including postponement of the sale, in order that the court can determine if the property can be partitioned, so as to avoid sale of the innocent party's portion or grant and afford other relief by the court protective of the rights and interests of such innocent party.

§11-10-13d. Sale of perishable goods.

1 If the tax commissioner determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and:
2 (a) Return to owner. — If the owner of the property can be readily found, the tax commissioner shall give him notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner either:
3 (1) Pays to the tax commissioner an amount equal to the appraised value; or
4 (2) Gives bond in such form, with such sureties, and in such amount as the tax commissioner shall prescribe, to pay the appraised amount at such time as the tax commissioner determines to be appropriate under the circumstances.
5 (b) Immediate sale. — If the owner does not pay such amount or furnish such bond in accordance with this subsection, the tax commissioner shall, as soon as practicable, make public sale of the property in accordance with such regulations as may be prescribed by the tax commissioner.

§11-10-13e. Redemption of property.

1 (a) Before sale. — Any person whose property has been
levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the tax commissioner at any time prior to the sale thereof, and upon such payment, the tax commissioner shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) Redemption of real estate after sale.

(1) Period. — The owners of any real property sold as provided in section thirteen-c, their heirs, executors or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within one hundred eighty days after the sale thereof.

(2) Price. — Such property or tract of property shall be permitted to be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the tax commissioner, for the use of the purchaser, his heirs or assigns, the amount paid by such purchaser and interest thereon at the rate specified in section seventeen-a, from the date the purchaser paid the purchase price to the date the property is redeemed.

(c) Record. — When any lands sold are redeemed as provided in this section, the tax commissioner shall cause entry of the fact to be made upon the record mentioned in section thirteen-h and such entry shall be evidence of such redemption.

(d) Subrogation to state lien. — Any person redeeming the interest of another shall be subrogated to the lien of the state on such interest. Such person shall lose his right to this lien, however, unless within thirty days after receiving the certificate of sale of personal property or the tax commissioner’s deed of real property, he shall file with the clerk of the county in which the real property is located or of the county in which the personal property is located or where the delinquent taxpayer resides or has his business location, or if neither be in this state, the clerk of Kanawha County, his claim against the delinquent taxpayer and a copy of the certificate of sale of personal property or deed to real property.
§11-10-13f. Certificate of sale; deed to real property.

(a) Certificate of sale. — In the case of property sold as provided in section thirteen-c the tax commissioner shall provide to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser and the price paid therefor.

(b) Deed to real property. — In the case of any real property sold as provided in section thirteen-c and not redeemed in the manner and within the time provided in section thirteen-e, the tax commissioner shall execute, in accordance with the laws of this state pertaining to sales of real property under execution, to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed to the real property so purchased by him reciting the facts set forth in the certificate.

(c) Real property purchased by the state. — If real property is declared purchased by the state of West Virginia at a sale pursuant to section thirteen-c, the tax commissioner shall, at the proper time, execute a deed therefor, and without delay cause such deed to be duly recorded in the office of the clerk of the county in which the real property is located.

§11-10-13g. Legal effect of certificate of sale of personal property and deed of real property.

(a) Certificate of sale of property other than real property. — In all cases of sale pursuant to section thirteen-c of property (other than real property), the certificate of such sale:

(1) As evidence. — Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) As conveyances. — Shall transfer to the purchaser all right, title and interest of the party delinquent in and to the property sold; and

(3) As authority for transfer of corporate stock. — If such property consists of stocks, shall be notice, when received, to any corporation, company or association of such transfer, and shall be authority to such corporation,
company or association to record the transfer on its books
and records in the same manner as if the stocks were
transferred or assigned by the party holding the same, in
lieu of any original or prior certificate, which shall be void,
whether canceled or not; and
(4) As receipts. — If the subject of sale is securities or
other evidences of debt, shall be a good and valid receipt to
the person holding the same, as against any person holding
or claiming to hold possession of such securities or other
evidences of debt; and
(5) As authority for transfer of title to motor vehicle. —
If such property consists of a motor vehicle, shall be notice,
when title to received, to any public official charged with
the registration of title to motor vehicles, of such transfer
and shall be authority to such official to record the transfer
on his books and records in the same manner as if the
certificate of title to such motor vehicle has been
transferred or assigned by the party holding the same, in
lieu of any original or prior certificate, which shall be void,
whether canceled or not.
(b) Deed of real property. — In the case of the sale of real
property, pursuant to section thirteen-c:
(1) Deed as evidence. — The deed of sale given pursuant
to section thirteen-c shall be prima facie evidence of the
facts therein stated; and
(2) Deed as conveyance of title. — If the proceedings of
the tax commissioner as set forth have been substantially in
accordance with the provisions of law, such deed shall be
considered and operate as a conveyance of all the rights,
title and interest the party delinquent had in and to the real
property thus sold at the time the lien of the state of West
Virginia attached thereto.
(c) Effect of junior encumbrances. — A certificate of sale
of personal property given or a deed to real property
executed pursuant to section thirteen-f shall discharge such
property from all liens, encumbrances and titles over which
the lien of the state of West Virginia with respect to which
the levy was made had priority.

§11-10-13h. Records of sale.
  (a) Requirement. — The tax commissioner shall, for
each county, keep a record of all sales of real property under
section thirteen-c and of redemptions of such property. The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers and the date of the deed.

(b) *Copy as evidence.* — A copy of such record, or any part thereof, certified by the tax commissioner shall be evidence in any court of this state of the truth of the facts therein stated.

§11-10-13i. Expense of levy and sale.

The tax commissioner shall determine the expenses to be allowed in all cases of levy and sale under this article.

§11-10-13j. Application of proceeds of levy.

(a) *Collection of liability.* — Any money realized from a levy shall be applied as follows:

1. *Expense of levy and sale.* — First, against the expenses of the proceedings;
2. *Liability of delinquent taxpayer.* — The amount, if any, remaining after applying subdivision (1) shall then be applied against the liability in respect of which the levy was made or the sale conducted. The amount, if any, remaining shall then be applied against any other delinquent tax liability of the taxpayer for which levy may be made under section thirteen.

(b) *Surplus proceeds.* — Any surplus proceeds remaining after the application of subsection (a) shall, upon application and satisfactory proof in support thereof, be credited or refunded by the tax commissioner to the person or persons legally entitled thereto.

§11-10-13k. Authority to release levy and return property.

(a) *Release of levy.* — It shall be lawful for the tax commissioner, under regulations prescribed by him, to release the levy upon all or part of the property or rights to property levied upon where the tax commissioner determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent a subsequent levy.

(b) *Return of property.* — If the tax commissioner determines that property has been wrongfully levied upon,
it shall be lawful for the tax commissioner to return:
(1) The specific property levied upon;
(2) An amount of money equal to the amount of money
levied upon; or
(3) An amount of money equal to the amount of money
received by the state of West Virginia from a sale of such
property. Property may be returned at any time. An amount
equal to the amount of money levied upon or received from
such sale may be returned at any time before the expiration
of nine months from the date of such levy. For purposes of
subdivision (3), if property is declared purchased by the state
of West Virginia at a sale pursuant to section thirteen-c
(relating to manner and conditions to sale), the state of West
Virginia shall be treated as having received an amount of
money equal to the minimum price determined pursuant to
such section or (if larger) the amount received by the state of
West Virginia from the resale of such property.
(c) The tax commissioner shall, upon request, make
public the names and persons in whose favor a release of
levy or return of property has been made in subsections (a)
and (b).
(d) Interest. — Interest shall be allowed and paid at an
annual rate established under section seventeen-a:
(1) In a case described in subdivision (2), subsection (b),
from the date the tax commissioner receives the money to
a date (to be determined by the tax commissioner) pre-
ceding the date of return by not more than thirty days; or
(2) In a case described in subdivision (3), subsection
(b), from the date of the sale of the property to a date
(to be determined by the tax commissioner) preceding the
date of return by not more than thirty days.

§11-10-15. Limitations on assessment.
(a) General rule. — The amount of any tax, additions to
tax, penalties and interest imposed by this article or any of
the other articles of this chapter to which this article is
applicable shall be assessed within three years after the
date the return was filed (whether or not such return was
filed on or after the date prescribed for filing): Provided,
That in the case of a false or fraudulent return filed with the
intent to evade tax, or in case no return was filed, the
assessment may be made at any time.
(b) Time return deemed filed.
(1) **Early return.** — For purposes of this section, a return filed before the last day prescribed by law, or by regulations promulgated by the tax commissioner for filing thereof, shall be considered as filed on such last date;

(2) **Returns executed by tax commissioner.** — The execution of a return by the tax commissioner pursuant to the authority conferred by section five-c of this article, shall not start the running of the period of limitations on assessment and collection.

(c) **Exceptions.** — Notwithstanding subsection (a):

(1) **Extension by agreement.** — The tax commissioner and the taxpayer may enter into written agreements to extend the period within which the tax commissioner may make an assessment against the taxpayer which shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon;

(2) **Deficiency in federal tax.** — Notwithstanding subsection (a), in the event of a final determination by the United States Internal Revenue Service or other competent authority of a deficiency in the taxpayer's federal income tax liability, the period of limitation, upon assessment of a deficiency reflecting such final determinations in the net income tax imposed by article twelve-a and the taxes imposed by articles twenty-one and twenty-four of this chapter, shall not expire until ninety days after the tax commissioner is advised of the determination by the taxpayer as provided in section six-a of said article twelve-a, section fifty-nine of said article twenty-one and section twenty of said article twenty-four, or until the period of limitations upon assessment provided in subsection (a) has expired, whichever expires the later, and regardless of the tax year of the deficiency;

(3) **Special rule for certain amended returns.** — Where, within the sixty-day period ending on the day on which the time prescribed in this section for the assessment of any tax for any taxable year would otherwise expire, the tax commissioner receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire
before the day sixty days after the day on which the tax commissioner receives such document;

(4) **Net operating loss or capital loss carrybacks.** — In the case of a deficiency attributable to the application by the taxpayer of a net operating loss carryback or a capital loss carryback (including that attributable to a mathematical or clerical error in application of the loss carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed;

(5) **Certain credit carrybacks.** — In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including that attributable to a mathematical or clerical error in application of the credit carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before expiration of the period within which a deficiency for such subsequent taxable year may be assessed. The term “credit carryback” means any carryback allowed under section eight, article one, chapter five-e of this code;

(6) **Overpayment of tax credited against payment of another tax.** —In the event of a final determination that a taxpayer owes less tax than the amount paid by the taxpayer, and the amount paid was allowed as a credit against a tax administered under this article, the period of limitation upon assessment of a deficiency in the payment of such other tax due to the overstating of the allowable credit, shall not expire until ninety days after the tax commissioner receives written notice from the taxpayer advising the tax commissioner of the final determination reducing the taxpayer’s liability for a tax allowed as a credit against a tax administered under this article, or until the period of limitations upon assessment provided in subsection (a) has expired, whichever expires the later, and regardless of the tax year of the deficiency.
(d) Cases under bankruptcy code. — The running of limitations provided in subsection (a), on the making of assessments, or provided in section sixteen, on collection, shall, in a case under title eleven of the United States code, be suspended for the period during which the tax commissioner is prohibited by reason of such case from making the assessment or from collecting the tax and:

(1) For assessment, sixty days thereafter; and

(2) For collection, six months thereafter.

§11-10-17. Interest.

(a) Underpayments. — If any amount of a tax administered under this article is not paid on or before the last day prescribed for payment, interest on such amount at the rate of eight percent per annum shall be paid for the period from such last date to the date paid: Provided, That on and after the first day of July, one thousand nine hundred eighty-six, interest on underpayments shall be paid at the annual rate established under section seventeen-a from the period beginning on the said first day of July, or from the last day prescribed for payment, whichever is the later, to the date paid, regardless of when liability for the tax arose. For purposes of this subsection, the last date prescribed for payment shall be the due date of the return and shall be determined without regard to any extension of time for payment.

(b) Last date for payment not otherwise prescribed. — In the case of taxes payable by stamp or other indicia of tax payment and in all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises and in no event shall be later than the date notice and demand for payment of the tax is made by the tax commissioner.

(c) Erroneous refund or credit. — If any refund is made or credit is established upon an erroneous claim for refund or credit, interest on such amount refunded or credited at the annual rate established under section seventeen-a shall be paid by the claimant from the date the refund was made or the credit was taken to the date such amount is recovered.
(d) **Overpayments.** — Interest shall be allowed and paid at the annual rate of eight percent per annum upon any amount which has been finally administratively or judicially determined to be an overpayment in respect of each tax administered under this article except the taxes imposed by articles twelve, fourteen and fourteen-a of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-six, interest on overpayments shall be paid at the annual rate established under section seventeen-a from said first day of July, or the date the claim for refund or credit is filed, whichever is the later, regardless of when the tax was paid. Such interest shall be allowed and paid for the period commencing with the date of the filing by the taxpayer of a claim for refund or credit with the tax commissioner and ending with the date of a final administrative or judicial determination of overpayment. The tax commissioner shall, within thirty days after such determination of entitlement to refund, issue his requisition or establish a credit as requested by the taxpayer. Whenever the tax commissioner fails or refuses to issue any such requisition or establish such credit within said thirty-day period, the interest provided herein shall commence to accrue until performance by the tax commissioner. The acceptance of such refund check or credit shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(e) **Applicable rules.** — For purposes of this section:

1. **No interest payable on tax refunded or credited within ninety days after claim for refund or credit is filed.** — In the event of the overpayment of any tax administered under this article, except the tax imposed by articles twenty-one and twenty-four of this chapter, where the tax commissioner issues his requisition or establishes a credit as requested by the taxpayer within ninety days after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.

2. **No interest payable where personal income tax and corporation net income tax refunded or credited within six months after claim for refund or credit is filed.** — In the event of the overpayment of the tax imposed by articles twenty-one and twenty-four of this chapter, where the tax
commissioner issues his requisition or establishes a credit
as requested by the taxpayer within six months after the
date of the filing by the taxpayer of a claim for refund or
credit, no interest shall be allowed under this section.
(3) Interest treated as tax. — Interest prescribed under
this section on any tax shall be collected and paid in the
same manner as taxes.
(4) No interest on interest. — No interest under this
section shall be imposed on the interest provided by this
section prior to the first day of July, one thousand nine
hundred eighty-six.
(5) Interest on penalties or additions to tax. — Interest
shall be imposed under subsection (a) on any assessable
penalty or additions to tax only if such penalty or additions
to tax is not paid within fifteen days from the date of notice
and demand therefor, and in such case interest shall be
imposed only for the period from the date of the notice and
demand to the date of payment.
(6) Payments made within fifteen days after notice and
demand. — If notice and demand is made for payment of any
amount, and if such amount is paid within fifteen days after
the date of such notice and demand, interest under this
section on the amount so paid shall not be imposed for the
period after the date of such notice and demand.
(7) Limitation on collection. — Interest prescribed
under this section on any tax may be collected at any time
during the period within which the tax to which such
interest relates may be collected.
(8) Exception as to estimated tax. — This section shall
not apply to any failure to pay any estimated tax required to
be paid under article thirteen, thirteen-c, thirteen-b,
twenty-one, twenty-three or twenty-four of this chapter.

§11-10-17a. Determination of rate of interest.

(a) In general. — The annual rate of interest established
under this section shall be such adjusted rate as is
established by the tax commissioner under subsection (b):
Provided, That such annual rate shall never be less than
eight percent per annum.
(b) Adjustments of interest rate.
(1) Establishment of adjusted rate. — If the adjusted
prime rate charged by banks (rounded to the nearest full
percent):
(A) During the six-month period ending on the thirtieth
day of September of any calendar year; or
(B) During the six-month period ending on the thirty-
first day of March of any calendar year, differs from the
interest rate in effect under this section on either such date,
respectively, then the tax commissioner shall establish,
within fifteen days after the close of the applicable six-
month period, an adjusted rate of interest equal to such
adjusted prime rate.
(2) Effective date of adjustment. — Any such adjusted
rate of interest established under subdivision (1) shall
become effective:
(A) On the first day of January of the succeeding year in
the case of an adjustment attributable to paragraph (1)(A)
above; and on
(B) The first day of July of the same year in the case of an
adjustment attributable to paragraph (1)(B).
(c) Definition of "adjusted prime rate." — For purposes
of subsection (b), the term "adjusted prime rate charged by
banks" means the average predominant prime rate quoted
by commercial banks to large businesses, as determined by
the board of governors of the Federal Reserve System.
(d) Application of change in interest rate.
(1) To deficiencies. — The interest rate in effect at the
time of assessment or when the payment of delinquent tax is
made shall not be applied retroactively to the date the tax
was due. Interest on moneys owed by the taxpayer shall be
the sum of the interest amounts calculated for each year or
part thereof from the date prescribed for payment
(determined without regard to any extensions) to the date
the payment is made using the interest rate in effect for each
respective year or part thereof.
(2) To overpayments. — The interest rate in effect at the
time an overpayment of tax is refunded, or a credit therefor
is established, by the tax commissioner, shall not be applied
retroactively to the date the claim for refund or credit was
filed with the tax commissioner. Interest on moneys owed to
taxpayers shall be the sum of the interest amounts
calculated for each year or part thereof from date the claim
for refund or credit was filed with the tax commissioner
until date the refund is paid or a credit therefor is
established (such dates determined as provided in section
seventeen) using the interest rate in effect for each respective year or part thereof.

§11-10-18. Additions to tax.

(a) Failure to file tax return or pay tax due.

(1) In the case of failure to file a required return of any tax administered under this article on or before the date prescribed for filing such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: Provided, That this addition to tax shall be imposed only on the net amount of tax due;

(2) In the case of failure to pay the amount shown as tax, on any required return of any tax administered under this article on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one half of one percent of the amount of such tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: Provided, That the addition to tax shall be imposed only on the net amount of tax due;

(3) In the case of failure to pay any amount in respect to any tax required to be shown on a return specified in subdivision (1) which is not so shown within fifteen days of the date of notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one half of one percent of the amount of each tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.
aggregate: *Provided*, That this addition to tax shall be imposed only on the net amount of tax due.

(b) *Limitation and special rule.*

(1) Additions under more than one paragraph:

(A) With respect to any return, the amount of the addition under subdivision (1) of subsection (a) shall be reduced by the amount of the addition under subdivision (2) of subsection (a) for any month to which an addition to tax applies under both subdivisions (1) and (2);

(B) With respect to any return, the maximum amount of the addition permitted under subdivision (3) of subsection (a) shall be reduced by the amount of the addition under subdivision (1) of subsection (a) (determined without regard to the last sentence of such subsection) which is attributable to the tax for which the notice and demand is made and which is not paid within fifteen days of notice and demand.

(2) *Amount of tax shown more than amount required to be shown.* — If the correct amount of tax due is less than the amount shown on the return, subdivisions (1) and (2) of subsection (a) shall only apply to the lower amount.

(3) *Exception for estimated tax.* — Subsection (a) shall not apply to any failure to pay any estimated tax.

(c) *Negligence or intentional disregard of rules and regulations.* — If any part of any underpayment of any tax administered under this article is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the amount of tax due five percent of the amount of such tax if the underpayment due to negligence or intentional disregard of rules and regulations is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such underpayment continues, not exceeding twenty-five percent in the aggregate: *Provided*, That these additions to tax shall be imposed only on the net amount of tax due and shall be in lieu of the additions to tax provided for in subsection (a), and the tax commissioner shall state in his notice of assessment the reason or reasons for imposing this addition to tax with sufficient particularity to put the taxpayer on notice regarding why it was assessed.

(d) *False or fraudulent return.* — In the case of the filing of any false or fraudulent return with intent to evade any
such tax, or in the case of willful failure to file a return with intent to evade tax, there shall be added to the tax due an amount equal to fifty percent thereof which shall be in lieu of the additions to tax provided for in subsections (a) and (c). The burden of proving fraud, willfulness or intent to evade tax shall be upon the tax commissioner. In the case of a joint personal income tax return under article twenty-one of this chapter, this subsection shall not apply with respect to the tax of the spouse unless some part of the underpayment is due to the fraud of such spouse.

(e) **Additions to tax treated as tax.** — Additions to tax prescribed under this section on any tax shall be assessed, collected and paid in the same manner as taxes.

**§11-10-18a. Additions to tax for failure to pay estimated tax.**

(a) **Addition to tax.** — Except as provided in subsections (d) and (e), in the case of any underpayment of estimated tax, there shall be added to the tax due for the taxable year, under any article administered by this article, an amount determined at the rate established under section seventeen or seventeen-a of this article, on the amount of the underpayment of estimated tax for the period of underpayment.

(b) **Amount of underpayment.** — For purposes of subsection (a), the amount of the underpayment shall be in excess of:

(1) The amount of the installment which would be required to be paid if the estimated tax were an amount equal to ninety percent of the tax shown on the return for the taxable year, or if no return was filed, ninety percent of the tax for such year, over

(2) The amount, if any, of the installments paid on or before the last date prescribed for payment.

(c) **Period of underpayment.** — The period of underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The due date of the annual return following the close of the taxable year for which the installment was due;

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment
shall be considered a payment of any previous
underpayment only to the extent such payment exceeds the
amount of the installment determined under subdivision
(1), subsection (b) for such installment date.

(d) Exception. — Notwithstanding the provisions of the
preceding subsections, the additions to tax with respect to
any underpayment of any installment shall not be imposed
if the total amount of all payments of estimated tax made on
or before the last date prescribed for the payment of such
installment equals or exceeds the amount which would
have been required to be paid on or before such date if the
estimated tax were whichever of the following is lesser:

(1) Prior year's tax. — The tax shown on the return of
the taxpayer for the preceding taxable year, if a return
showing a liability for tax was filed by the taxpayer for the
preceding taxable year and such preceding year was a
taxable year of twelve months;

(2) Prior year's facts. — An amount equal to the tax
computed at the rates applicable to the current taxable
year, but otherwise on the basis of the facts shown on the
return of the taxpayer for, and the law applicable to, the
preceding taxable year;

(3) Annualized tax.

(A) An amount equal to ninety percent of the tax for the
current taxable year computed by placing on an annualized
basis the taxable income:

(i) For the first three months of the taxable year, in the
case of the installment required to be paid in the third or
fourth month;

(ii) For the first three months of the first five months of
the taxable year, in the case of the installment required to
be paid in the sixth month;

(iii) For the first six months or the first eight months of
the taxable year, in the case of the installment required to
be paid in the ninth month; and

(iv) For the first nine months or for the first eleven
months of the taxable year, in the case of the installment
required to be paid in the twelfth month of the taxable year
or the first month of the next succeeding taxable year.

(B) For purposes of this subdivision (3), the taxable
income shall be placed on an annualized basis by:

(i) Multiplying by twelve the taxable income referred to
in subparagraph (A); and
(ii) Dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine or eleven, as the case may be) referred to in subparagraph (A).

(e) **Short taxable year.** — The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the tax 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.

It is the intent of the Legislature in enacting the tax penalty and additions to tax amnesty program, as provided by this article, to improve compliance with this state’s tax laws and to accelerate and increase collections of certain taxes currently owed to this state. The Legislature finds and declares that a public purpose is served by the waiver of tax penalties, additions to tax and criminal prosecution in return for the immediate reporting and payment of previously underreported, nonreported, unpaid or underpaid tax liabilities which accrued prior to or are delinquent as of the first day of January, one thousand nine hundred eighty-six. The benefits gained by this program include, among other things, accelerated receipt of certain currently owed taxes, permanently bringing into the tax system taxpayers who have been evading tax and providing an opportunity for taxpayers to clear their records and satisfy tax obligations. It is further the intent of the Legislature in enacting this article that the tax penalty and additions to tax amnesty program be a one-time occurrence which shall not be repeated in the future, since taxpayers’ expectations of future amnesty programs could have a counterproductive effect on compliance today.
§11-10B-2. Definitions.

(a) General rule. — Terms used in this article shall have
the meaning ascribed to them in section four, article ten of
this chapter, unless the context in which the term is used in
the article clearly requires a different meaning, or the term
is defined in subsection (b) of this section.

(b) Terms defined. — For purposes of this article, the
term:

(1) “Additions to tax” shall mean that amount imposed
by section eighteen, or eighteen-a, article ten of this
chapter, for failure to file a return or pay tax due, or for
negligence or intentional disregard of rules and regulations
of the tax commissioner, for filing a false or fraudulent
return, or for failure to pay estimated tax, and includes
“additions to tax” imposed by articles fourteen, fourteen-a,
seventeen, nineteen, twenty-one and twenty-four of this
chapter, as in effect on the thirtieth day of June, one
thousand nine hundred seventy-eight, and preserved in
section twenty, article ten of this chapter, for periods
ending on or before that date;

(2) “Applicant” shall mean any person who timely files
an application for amnesty under this article;

(3) “Penalty” shall mean and include additions to tax,
penalties imposed by section nineteen, article ten of this
chapter, penalties imposed by articles eleven, twelve,
thirteen, fourteen, fourteen-a, fifteen, fifteen-a, seventeen,
nineteen, twenty-one or twenty-four of this chapter, as such
articles are presently written or as in effect on the thirtieth
day of June, one thousand nine hundred seventy-eight, and
preserved in section twenty, article ten of this chapter, for
periods ending on or before that date;

(4) “Specified tax” shall mean the tax or taxes and the
periods thereof for which the taxpayer applies for amnesty
under this article.

§11-10B-3. Development and administration of program,
implementation of article.

The tax commissioner shall develop and administer the
tax penalty and additions to tax amnesty program as
provided in this article, and shall develop and issue such
forms, instructions, regulations and guidelines as he deems
to be necessary, and take any other action needed to implement this article.

§11-10B-4. Duration and application of program.

The tax commissioner shall establish a three-month tax penalty and additions to tax amnesty program to be conducted during the calendar year, one thousand nine hundred eighty-six. The program shall apply to payments and returns required pursuant to any tax specified in section three, article ten of this chapter, but only if the obligation for payment or filing of a return, or both, arose prior to, is delinquent as of, or is due and payable as of the first day of January, one thousand nine hundred eighty-six.

§11-10B-5. Waiver of penalties; criminal immunity; exceptions and limitations.

(a) For any taxpayer who meets the requirements of section six below, and except as otherwise specifically provided in this article.

(1) The tax commissioner shall waive all penalties, as defined in section two of this article, and all additions to tax, as defined in said section two, for the taxes for which tax penalty and additions to tax amnesty is granted, which are owed as a result of nonpayment, underpayment, nonreporting or underreporting of tax liabilities; and

(2) No criminal action may be brought against the taxpayer for the default for which tax penalty and additions to tax amnesty is granted.

(b) This section does not apply to nonpayment, underpayment, nonreporting, misreporting or underreporting of tax liabilities for which amnesty is sought if, as of the date the taxpayers' application for amnesty is filed:

(1) The taxpayer is the subject of a criminal investigation by any agency of this state; or

(2) An administrative proceeding, or a civil or criminal court proceeding has been initiated or is pending in any administrative agency or court of this state or of the United States for nonpayment, delinquency, fraud or other event of noncompliance in relation to any of the specified taxes. An administrative or civil proceeding shall not be deemed to be
pending if the taxpayer withdraws with prejudice from the proceeding prior to the granting of amnesty, pays in full the outstanding tax liability plus the accrued interest thereon and otherwise cures any default which is the subject of such proceeding.

(c) No refund or credit may be granted for any penalty or addition to tax paid prior to the time the taxpayer files his application for tax penalty and additions to tax amnesty pursuant to section six below. Additionally, no refund or credit shall be granted for any specified taxes plus interest paid under this program unless the tax commissioner, on his own motion, redetermines the amount of tax and accrued interest thereon.

(d) The taxpayer shall not be eligible for amnesty for any tax liability if the taxpayer has other liabilities outstanding for a tax listed in section three, article ten of this chapter, for which he has not applied for amnesty.

§11-10B-6. Application for amnesty; requirements; deficiency assessment.

(a) The provisions of this article apply to any taxpayer who, on or after the date of commencement of the tax penalty and additions to tax amnesty program and on or before the termination date designated by the tax commissioner, files an application for tax penalty and additions to tax amnesty on or before the last day of the third calendar month of the amnesty program and does the following:

(1) Voluntarily completes, signs and files amended tax returns to report transactions and other material matters not included on original returns and pays in full all additional taxes and interest shown to be due thereon;

(2) Voluntarily completes, signs and files all delinquent tax returns and pays in full all taxes and interest shown to be due thereon;

(3) Voluntarily completes, signs and files amended tax returns to correct all incorrect, deficient or incomplete original returns and pays in full all taxes and interest shown to be due thereon; and

(4) Voluntarily pays in full all previously assessed tax liabilities and other taxes legally collectible under section eleven, article ten of this chapter, and interest due thereon.
(b) Except as provided in subsection (d) below, all taxes for which tax penalty and additions to tax amnesty is sought plus accrued interest shall be paid not later than the last day of the month next succeeding the termination of the amnesty program. Interest on the amount of tax due shall be calculated at the rate prescribed in article ten of this chapter, which continues to accrue until the tax liability is paid.

(c) Payments made by the taxpayer under this tax penalty and additions to tax amnesty program shall be in money, United States currency or by certified check, cashier's check or post office money order, payable to the tax commissioner of this state.

(d) The tax commissioner may, at his discretion and upon such terms and conditions as he may prescribe, enter into an installment payment agreement with the taxpayer, such installment payment agreement to be in lieu of the full immediate payment required by subsection (b) of this section. Any such agreement shall include interest on the outstanding amount due. Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties and additions to tax under this amnesty program null and void, unless the tax commissioner determines that the failure was due to reasonable cause, and, in the event of such unexcused noncompliance with the terms of the installment payment agreement, the total amount of tax, interest and all additions to tax and penalties shall be immediately due and payable.

(e) If, subsequent to termination of the tax penalty and additions to tax amnesty program, the tax commissioner determines there was a defect in the amnesty application or in the materials submitted in support of the amnesty application and subsequently issues a deficiency assessment upon a return or amended return filed pursuant to subsection (a) of this section, the tax commissioner has the authority to impose applicable penalties and additions to tax and to pursue any criminal prosecution as may ordinarily be brought with respect to such defect as if no amnesty had been granted the taxpayer.

(f) The tax commissioner may review all cases in which amnesty has been granted and may on the basis of mistake
of fact, fraud or misrepresentation rescind the grant of
amnesty, or in lieu thereof, appropriate review of the grant
of amnesty may be obtained by proceeding under article
nine or ten (or both) of this chapter. Any taxpayer who files
a false or fraudulent return or amended return, or attempts
in any manner to defeat or evade payment of a tax under
this amnesty program, shall be subject to applicable civil
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
disaster in twenty-nine counties of this state. The tax
10 commissioner shall retain the amount of two hundred
11 thousand dollars to cover his costs of administering this
12 program. All additional revenues collected by the tax
13 commissioner under the provisions of this article, the
14 disposition of which is not otherwise dedicated by
15 constitutional provision or prior statutory enactment, shall
16 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.
§11-12-22. 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.
(C) The conduct of charitable bingo by any person licensed under article twenty, chapter forty-seven of this code.

(D) The conduct of a charitable raffle by any person.

(E) The conduct of a horse or dog race meeting by any racing association licensed under article twenty-three, chapter nineteen of this code.

(F) The operation or maintenance of the pari-mutuel system of wagering during the conduct of a licensed horse or dog race meeting.

(G) The sale of any commodity during the conduct of a licensed horse or dog race meeting.

(H) The services of owners, trainers or jockeys which are essential to the effective conduct of a licensed horse or dog race meeting.

(I) Occasional or casual sales of property or services.

(3) "Business registration certificate" shall mean a certificate issued by the tax commissioner authorizing a person to conduct business within the state of West Virginia; and when referred to in this chapter as a certificate of registration or a business franchise registration certificate, it shall mean a business registration certificate.

(4) "Occasional sale" or "casual sale" shall mean a sale of tangible personal property not held or used by a seller in the course of an activity for which a business registration certificate is required, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business: Provided, That such sale or exchange is not one of a series of sales or exchanges sufficient in number, scope and character to constitute a business activity requiring the holding of a business registration certificate.

(5) "Person" or "company" shall mean and include any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, club, society, or other group or combination acting as a unit, or body politic or political subdivision (whether public or private, or quasi-public) and in the plural thereof as well as the singular, and when used in connection with the penalties imposed by section nine of this article shall mean and include the officers, directors,
trustees, or members of any firm, copartnership, joint
venture, association, corporation, trust, business trust,
syndicate or any other groups or combinations acting as a
unit.

(6) "Registration year" shall mean a period of twelve
calendar months beginning the first day of July and ending
the thirtieth day of the following June.

(7) "Registrant" shall mean any person who has been
issued a business registration certificate under this article
for the current registration year.

(8) "Tax commissioner" shall mean the tax
commissioner or his agent.

§11-12-3. Business registration certificate required; tax levied;
exemption from tax.

(a) Registration required. — No person shall, without a
business registration certificate, engage in or prosecute, in
the state of West Virginia, any business activity without
first obtaining a business registration certificate from the
tax commissioner of the state of West Virginia.
Additionally, before beginning business in this state, such
person:

(1) If a transient vendor, shall comply with the
provisions of sections twenty through twenty-five of this
article.

(2) If a collection agency, shall comply with the
provisions of article sixteen, chapter forty-seven of this
code.

(3) If an employment agency, shall comply with the
provisions of article two, chapter twenty-one of this code.

(4) If selling drug paraphernalia, as defined in section
three, article nineteen, chapter forty-seven of this code,
shall comply with the provisions of article nineteen, chapter
forty-seven of this code.

Persons engaging in or prosecuting other business
activities in this state may also be subject to other
provisions of this code which they must satisfy before
commencing or while engaging in a business activity in this
state.

(b) Tax levied. — The business registration tax hereby
levied shall be fifteen dollars for each business registration
certificate.
(1) A separate business registration certificate is required for each fixed business location from which property or services are offered for sale or lease to the public as a class, or to a limited portion of the public; or at which customer accounts may be opened, closed or serviced.

(2) A separate business registration certificate is not required for each coin-operated machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity.

(3) A business that sells tangible personal property or services from or out of one or more vehicles needs a separate business registration certificate for each fixed location in this state from or out of which business is conducted. A copy of its business registration certificate shall be carried in each vehicle and publicly displayed while business is conducted from or out of the vehicle.

(4) A business registration certificate is required by subsection (a) for every person engaging in purposeful revenue generating activity in this state. If that activity is one for which an employment agency license or a collection agency license or a license to sell drug paraphernalia is required and no other business activity is conducted by that person at each business location for which the employment agency license or collection agency license or license to sell drug paraphernalia is issued, then only that license is required for each such activity conducted by the licensee at each business location. However, if in addition to the activity for which each license is issued, some other business activity is conducted by the licensee at such business location, a separate business registration certificate is required to conduct the nonlicensed activity.

(c) Exemptions from payment of tax. — The following persons are not required to obtain a business registration certificate, and are exempt from payment of the tax levied by subsection (b);

(1) Any person who had gross income from business activity of four thousand dollars or less during that person's tax year for state income tax purposes immediately preceding the registration year for which a registration certificate is required under this article.

(2) Any organization which qualifies, or would qualify,
for exemption from federal income taxes under section 501 of the Internal Revenue Code of 1954, as amended.

(3) Activities of this state and its political subdivisions which involve sales of tangible personal property, admissions or services, when those service activities compete with or may compete with the activities of another person.

(4) Activities of the United States, its agencies or instrumentalities which are exempt from taxation by the states.

(5) Any person engaged in the business of agriculture and farming.

(6) Any foreign retailer who is not a "retailer engaging in business in this state" as defined in section one, article fifteen-a of this chapter, who enters into an agreement with the tax commissioner to voluntarily collect and remit use 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.

(a) General rule. — Except as otherwise provided in this article, a person shall register with the tax commissioner prior to engaging in or prosecuting any business activity in this state. The application for business registration shall be in such form and contain such information as the tax commissioner may require; and the applicant shall set forth truthfully and accurately the information required by the tax commissioner. Upon receipt of a complete and properly executed application form, accompanied by payment of (or claim of exemption from) the tax levied by section three for each business registration certificate, the tax commissioner shall, if he determines to his satisfaction that all of the conditions precedent to the granting of such certificate have been fulfilled by the applicant, issue such business registration certificate or certificates.

(b) Certificate not to validate illegal activity. — Nothing in this article, including, but not limited to, any payment of the tax imposed or issuance of any certificate of registration under the provisions hereof, shall be deemed to legalize any act, business activity or transaction which otherwise may be illegal or conducted in violation of law; or to exempt any
person from any civil or criminal penalty prescribed for such illegal act or violation.

(c) Certificate not to be construed as consent to general tax jurisdiction of this state. — The filing of an application for business registration certificate (or for renewal thereof) and payment of the tax imposed by section three shall not be construed by the tax commissioner or the courts of this state as consent, submission or admission by the registrant to the general taxing jurisdiction of this state, and liability for such other taxes imposed by this state shall depend upon the relevant facts in each case and the applicable law.

(d) Power of municipalities to impose license taxes preserved. — Notwithstanding the repeal, as of the first day of July, one thousand nine hundred seventy, of certain license taxes then imposed by this article and article thirteen-a of this chapter, the power of a municipality to impose similar license taxes, by ordinance adopted pursuant to the authority of its charter or this code, was and is preserved: Provided, That the municipal license taxes imposed on any business, activity, trade or employment that was previously subject to a state license tax under this article or article thirteen-a of this chapter, cannot exceed the state license tax in effect on such business, activity, trade or employment of the first day of January, one thousand nine hundred seventy; and municipalities shall have the power to impose similar penalties as those then provided in this article and article thirteen-a of this chapter 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.

(a) Registration year. — All business registration certificates issued under the provisions of section four of this article shall be for a period of one year beginning the first day of July and ending the thirtieth day of the following June.

(b) Revocation or suspension of certificate.

(1) The tax commissioner may cancel or suspend a business registration certificate at any time during a registration year if:

(A) The registrant filed an application for a business
registration certificate, or an application for renewal thereof, for the registration year that was false or fraudulent.

(B) The registrant willfully refused or neglected to file any tax return or to report information required by the tax commissioner for any tax imposed by or pursuant to this chapter.

(C) The registrant willfully refused or neglected to pay any tax, additions to tax, penalties or interest, or any part thereof, when they become due and payable under this chapter, determined with regard to any authorized extension of time for payment.

(D) The registrant neglected to pay over to the tax commissioner on or before its due date, determined with regard to any authorized extension of time for payment, any tax imposed by this chapter which the registrant collects from any person and holds in trust for this state.

(E) The registrant abused the privilege afforded to it by article fifteen or fifteen-a of this chapter to be exempt from payment of the taxes imposed by such articles on some or all of the registrant’s purchases for use in business upon issuing to the vendor a properly executed exemption certificate, by failing to timely pay use tax on taxable purchase for use in business, or by failing to either pay the tax or give a properly executed exemption certificate to the vendor.

(2) Before canceling or suspending any such certificate, the tax commissioner shall give written notice of his intent to suspend or cancel the business registration certificate of the taxpayer, the reason for the suspension or cancellation, the effective date of the cancellation or suspension, and the date, time and place where the taxpayer may appear and show cause why such business registration certificate should not be canceled or suspended. This written notice shall be served on the taxpayer in the same manner as a notice of assessment is served under article ten of this chapter, not less than twenty days prior to the hearing date. Such hearing shall be held as provided in section nine of said article ten, and the provisions of section ten of said article ten shall apply to any appeal of the administrative decision issued under section nine of that article: Provided, That the filing of a petition for appeal with a court having
jurisdiction to hear the appeal shall not stay the effective
date of the suspension or cancellation. A court may order a
stay, after a hearing is held on any motion to stay filed by
the registrant, upon finding that the state revenues will not
be jeopardized by the granting of the stay. The tax
commissioner may, in his discretion and upon such terms as
he may specify, agree to stay the effective date of the
cancellation or suspension until another date certain.

(c) Refusal to renew. — The tax commissioner may
refuse to issue or renew a business registration certificate if
the registrant is delinquent in the payment of any tax
administered by the tax commissioner under article ten of
this chapter or the corporate license tax imposed by this
article, until the registrant pays in full all such delinquent
taxes including interest and applicable additions to tax and
penalties. In his discretion and upon such terms as he may
specify, the tax commissioner may enter into an installment
payment agreement with such taxpayer in lieu of the
complete payment. Failure of the taxpayer to fully comply
with the terms of the installment payment agreement shall
render the amount remaining due thereunder immediately
due and payable and the tax commissioner may suspend or
cancel the business registration certificate in the manner
hereinbefore provided.

§11-12-19. Contractors.

(a) General. — Every person who engages in this state in
any contracting business or activity shall have a copy of his
business registration certificate available at every
construction site in this state until his work at such site is
completed.

(b) Definitions. — For purposes of this section:
(1) “Contracting business or activity” means and
includes the furnishing of work, or both work and materials
for the erecting, building, constructing, altering, repairing,
removing or demolishing of any building or other structure,
or other improvement appurtenant to any such building or
other structure, or for altering, improving or developing of
property, under and by virtue of a contract with the owner
for an agreed lump sum or upon any other basis of
settlement and payment agreed to by the parties, whether
such contract be an oral agreement or in writing. The term
“contracting business or activity” shall also include the furnishing of work or both work and materials or equipment under and by virtue of a subcontract with a general contractor for an agreed contract price, or by day, or by piece, or by other basis of payment agreed to by parties, whether such contract be an oral agreement or in writing.

(2) “Contractor” means every person, including a subcontractor, who agrees by a written or oral contract to engage in contracting activity.

(3) “Construction site” means the area in which the contractor is working or beginning to work when engaging in contracting activity.

(c) Penalty for failure to have available. — In addition to other penalties provided by law, any contractor who fails to have available at the construction site during the time he is furnishing contracting activity at such site, his business registration certificate or a copy thereof, shall not be entitled to enforce the mechanics’ lien created by section one or two, article two, chapter thirty-eight of this code, for contracting activity provided by him at such construction site.

§11-12-20. Registration of transient vendors.

(a) Prior to conducting business or otherwise commencing operations within this state, a transient vendor shall obtain a business registration certificate from the tax commissioner and pay the tax imposed by this article.

(b) Upon receipt of the application for business registration and the posting of the bond required by section twenty-one, the tax commissioner shall issue to the transient vendor a business registration certificate, which shall be valid for the current registration year, if the application is complete and the transient vendor is not delinquent in the payment of any tax imposed by this chapter. Upon renewal of the registration, the tax commissioner shall issue a new certificate, valid for the next ensuing registration year, provided he is satisfied that the transient vendor has complied with the provisions of this article and is not delinquent in the payment of any tax imposed by this article.
(c) The transient vendor shall keep the business registration certificate in his possession at all times when conducting business within this state. He shall publicly display the certificate whenever conducting business in this state and shall exhibit the certificate upon the request of an authorized employee of the tax commissioner or any law-enforcement officer.

(d) The business registration certificate issued by the tax commissioner shall constitute notice that the transient vendor named therein has registered with the tax commissioner, and shall provide notice to the transient vendor that:

1. Before entering this state to conduct business the transient vendor must notify the tax commissioner, in writing, of the location or locations in this state where he intends to conduct business, and the date or dates on which he intends to conduct such business.

2. Failure to notify, or the giving of false information to the tax commissioner is grounds for suspension or revocation of the transient vendor's business registration certificate.

3. Conducting business in this state without having a valid business registration certificate after such certificate has been suspended or revoked, may result in criminal prosecution or the imposition of fines, or other penalties, or both for violation of this article.

(e) Definitions. — For purposes of this section:

1. "Transient vendor" means any person who:

   A. Brings into this state, by automobile, truck or other means of transportation, or purchases in this state, tangible personal property the sale or use of which is subject to one or more taxes administered by the tax commissioner under article ten of this chapter;

   B. Offers or intends to offer such tangible personal property for sale to consumers in this state; and

   C. Does not maintain an established office, distribution house, sales house, warehouse, service enterprise, residence from which business is conducted, or other place of business within this state.

2. The term "transient vendor" shall not include any person who:

   A. Is a commercial traveler or selling agent who sells
only to persons who purchase tangible personal property for purposes of resale to others;
(B) Only sells goods, wares or merchandise by sample catalog or brochure for future delivery;
(C) Only sells or offers for sale crafts or other handmade items that were made by the seller; or
(D) Only sells agricultural and farming products, except nursery products and foliage plants.


(a) With its application for a business registration certificate, a transient vendor shall post a bond with the tax commissioner in the amount of five hundred dollars as surety for compliance with the provisions of this article. After a period of demonstrated compliance with these provisions, the tax commissioner may reduce the amount of the bond required of a transient vendor or may eliminate the bond entirely.

(b) A transient vendor may file with the tax commissioner a request for voluntary suspension of its business registration certificate. If the tax commissioner is satisfied that the transient vendor has complied with the provisions of this article and has relinquished to the tax commissioner possession of the transient vendor’s business registration certificate, the tax commissioner shall return to the transient vendor the bond it posted.

§11-12-22. Notification to department.

Prior to entering this state to conduct business, a transient vendor shall notify the tax commissioner, in writing, of the location or locations where he intends to conduct business and the date or dates when he intends to conduct such business.

§11-12-23. Revocation of certificate of transient merchant.

The tax commissioner may suspend or revoke a business registration certificate issued to a transient vendor if the transient vendor:

(1) Fails to notify the tax commissioner as required by section twenty-two of this article.

(2) Provides the tax commissioner with false information regarding the conduct of his business by it within this state.
(3) Fails to collect and timely pay over consumers sales and service tax or use tax with regard to all sales of tangible personal property and services sold by him that are subject to the taxes imposed by article fifteen or fifteen-a of this chapter.

(4) Fails to timely file with the tax commissioner any tax return required to be filed by law or regulation for any tax administered by article ten of this chapter, or fails to timely pay the amount of tax shown thereon to be due.

(5) Fails to comply with the provisions of section eight, article five of this chapter, providing for assessment and payment of ad valorem property taxes on any goods or merchandise of a transient vendor to be offered or furnished for sale in this state.

§11-12-24. Seizure of property of transient vendor.

(a) If a transient vendor conducting business within this state fails to exhibit a valid business registration certificate upon demand by an authorized employee of the tax commissioner, such employee or any peace officer of this state at the request of such employee shall have authority to seize, without warrant, the tangible personal property and automobile, truck or other means of transportation used to transport or carry that property. All property seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the tax commissioner under procedures adopted by regulation, except as otherwise provided by this section.

(b) Property seized under subsection (a) shall be released upon:

(1) Presentation of a valid business registration certificate to an authorized employee of the tax commissioner; or

(2) Registration by the transient vendor with the tax commissioner and the posting of a bond in the amount of five hundred dollars, either immediately or within fifteen days after the property is seized.

§11-12-25. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect,
impair or invalidate the remainder of this article, but shall
be confined in its operation to the provision thereon directly
involved in the controversy in which such judgment shall
have been rendered, and the applicability of such provision
to other person or circumstances shall not be affected
thereby.

§11-12-26. Interpretation of preceding sections.
None of the provisions of the preceding sections in this
article shall affect any of the sections of this article dealing
with the corporation land holding tax or the corporation
license tax; and none of the sections of this article dealing
with such taxes shall affect any of the sections of this article
dealing with the business registration tax.

CHAPTER 22
(S. B. 8—By Mr. Tonkovitch, 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.


The following sales and services shall be exempt:

(1) Sales of gas, steam and water delivered to consumers
through mains or pipes, and sales of electricity;

(2) Sales of textbooks required to be used in any of the
(3) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(4) Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;

(5) Sales of property or services to churches and bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;

(6) Sales of property or services to corporations or organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1954, as amended, who make casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed by these organizations and shall not apply to purchases of gasoline or special fuel;

(7) Sales of property or services to persons engaged in this state in the business of contracting, manufacturing, transportation, transmission, communication or in the production of natural resources: Provided, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above, and shall not apply to purchases of gasoline or special fuel;

(8) An isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative;
(9) Sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to tax under this article or which would be subject to tax under this article but for the exemption for food provided in section eleven of this article and sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article or which would have been subject to tax under this article but for the exemption for food provided in section eleven of this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel shall not be exempt;

(10) Sales of tangible personal property for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers shall be taxable except when the sale is to another distributor for resale;

(11) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel shall be taxable;

(12) Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: Provided, That sales of gasoline and special fuel shall be taxable;

(13) Sales of newspapers when delivered to consumers by route carriers;

(14) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(15) Sales of radio and television broadcasting time, newspaper and outdoor advertising space for the advertisement of goods or services;

(16) Sales and services performed by day care centers;

(17) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary
course of repetitive and successive transactions of like
character by corporations or organizations qualified under
section 501(c)(3) of the Internal Revenue Code of 1954, as
amended, or under section 501(c)(4) of the Internal Revenue
Code of 1954, as amended;

(18) Bank safety deposit boxes;

(19) Sales of property or services to a school which has
approval from the West Virginia board of regents to award
degrees, which has its principal campus in this state, and
which is exempt from federal and state income taxes under
section 501(c)(3) of the Internal Revenue Code of 1954, as
amended: Provided, That sales of gasoline and special fuel
shall be taxable;

(20) Sales of mobile homes to be utilized by purchasers
as their principal year-round residence and dwelling:
Provided, That these mobile homes shall be subject to tax at
the three percent rate;

(21) Sales of lottery tickets and materials by licensed
lottery sales agents and lottery retailers authorized by the
state lottery commission, under the provisions of article
twenty-two, chapter twenty-nine of this code; and

(22) Leases of motor vehicles titled pursuant to the
provisions of article three, chapter seventeen-a of this code
This exemption shall apply to leases executed on or after the
first day of July, one thousand nine hundred eighty-seven,
and to payments under long-term leases executed before
such date, for months thereof beginning on or after such
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 reappraisalment 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 commis-
ioner, 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 appraisement 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 reim-
bursements of certain costs to the assessor and sheriff
by the tax commissioner; requiring the county commis-
sion 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, desig-
nated article one-b, all to read as follows:

Article
1A. Appraisal of Property for Periodic Statewide Reapraisals.
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 requires a different meaning:

2 (a) “Assessed value” of any item of property is its assessed value after the certification of the first statewide reappraisal and shall be sixty percent of the market value of such item of property regardless of its class or species, except as hereinafter specifically provided in this article;

3 (b) “Base year” shall have the meaning ascribed to that term by the provisions of section two of this article;

4 (c) “Commission” shall mean the West Virginia appraisal control and review commission;

5 (d) “Commissioner” or “tax commissioner” shall mean the chief executive officer of the state tax department except in those instances where the context clearly relates to the West Virginia appraisal control and review commission, in which case “commissioner” shall mean any member of such commission;

6 (e) “Designated agent” shall mean a person, not directly employed by the tax commissioner, who is designated by the tax commissioner to perform reappraisal functions authorized or required by this article. Such term shall include, but not be limited to, agents and independent contractors, and nothing in this article shall be construed to alter the relationship of the state of West Virginia, or its officers, and such persons to create relationships not contemplated by agreements between the tax commissioner and such persons;

7 (f) “Farm” shall mean and include land currently being used primarily for farming purposes, whether by the owner thereof or by a tenant, and which has been
so used for at least seasonally during the year next
preceding the then current tax year, but shall not
include lands used primarily in commercial forestry or
the growing of timber for commercial purposes; and
shall not include one acre surrounding the principal
residence situate on a farm which shall be valued as a
homesite in the same manner as surrounding homes and
properties not situated on farmland, taking into consid­
eration such variables as location, resale value and
accessibility. The commissioner of agriculture shall
formulate criteria upon which a parcel of land qualifies
as a “farm”. The county assessor may require the
assistance of the commissioner of agriculture in making
a determination of whether a parcel of land qualifies as
a “farm”.

(g) “Farming purposes” shall mean the utilization of
land to produce for sale, consumption or use, any
agricultural products, including, but not limited to,
livestock, poultry, fruit, vegetables, grains or hays or
any of the products derived from any of the foregoing,
tobacco, syrups, honey, and any and all horticultural and
nursery stock, Christmas trees, all sizes of ornamental
trees, sod, seed and any and all similar commodities or
products including farm wood lots and the parts of a
farm which are lands lying fallow, or in timber or in
wastelands;

(h) “Property situate in this state” shall mean:

(1) Property having legal situs in this state; or

(2) In the case of persons with a place of business
located in this state and authorized to do business in this
state and one or more other states of the United States
or any foreign country:

(A) Any tangible property brought into this state
from time to time or otherwise deemed to have situs in
this state for purposes of ad valorem property taxation;
and

(B) Any intangible property held by such person;
wherever evidence thereof is situate. In the case of
assessment of such intangible property for ad valorem
property taxation after the first statewide reappraisal only such part thereof as may be determined by applicable law or regulation to be subject to such taxation shall be deemed to be situate in this state;

(i) “Value”, “market value” and “true and actual value” shall have the same meaning and shall mean the price at or for which a particular parcel or species of property would sell if it were sold to a willing buyer by a willing seller in an arm’s length transaction without either the buyer or the seller being under any compulsion to buy or sell: Provided, That in determining value, primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situate over a period of not less than three nor more than eight years next preceding the base year and in the case of a farm or farms shall be determined assuming such land is being used for farming purposes. In addition, the commissioner may, for purposes of appraisement of any tract or parcel of real property, or chattels, real or other species of property, real or personal, take into account one or more of the following factors: (1) The location of such property; (2) its site characteristics; (3) the ease of alienation thereof, considering the state of its title, the number of owners thereof, and the extent to which the same may be the subject of either dominant or servient easements; (4) the quantity of size of the property and the impact which its sale may have upon surrounding properties; (5) if purchased within the previous eight years, the purchase price thereof and the date of each such purchase; (6) recent sale of, or other transactions involving comparable property within the next preceding eight years; (7) the value of such property to its owner; (8) the condition of such property; (9) the income, if any, which the property actually produces and has produced within the next preceding eight years; and (10) any commonly accepted method of ascertaining the market value of any such property, including techniques and methods peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.
§11-1A-29a. Duty of tax commissioner, assessors, sheriffs and county commissions in valuation of property.

Except as to hearing and deciding petitions for review by the several county commissions, it shall be the responsibility and duty of the tax commissioner to see to the proper and accurate valuation of all property subject to appraisal pursuant to this article or article one-b of this chapter, except for nonutility personal property. It is likewise the duty of the several county assessors, sheriffs and county commissions to assist the tax commissioner in his efforts to ascertain the true value of all such property and it is likewise their individual and collective duties to see to the proper and fair valuation of property within their respective counties. It shall be the responsibility and duty of each county assessor to see to the proper and accurate valuation of all nonutility personal property appraised pursuant to this article. The assessor shall review the initial appraisal of such personal property and shall make such adjustments as will render said appraisal equal and uniform. The tax commissioner shall provide such necessary guidelines and instructions, in accordance with chapter twenty-nine-a of this code to assessors as will ensure fair and uniform values of such property within each county and among all counties in this state. The tax commissioner shall review each assessor's work to ensure that such guidelines and instructions have been uniformly followed. Any changes in appraised values shall be entered into the computer network required by section twenty-one of this article, and notice of such change shall be mailed to the property owner. The failure of any such county official so to do or to carry out his or her duties with respect thereto shall constitute grounds for the removal from 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-1. Legislative findings and intent.

(a) The Legislature hereby finds that many citizens and taxpayers of this state have the belief that an unacceptable number of errors and misinformation are included within the results of the statewide appraisal of property subject to ad valorem taxes pursuant to the amendment of Article X, Section 1b of the Constitution of West Virginia, adopted in the year one thousand nine hundred eighty-two, which belief is sufficient to cast doubt over the results of such reappraisal in the mind of the general public.

(b) The Legislature recognizes that the constitutionally mandated reappraisal required an unprecedented effort to be expended by the state and counties to identify and establish the value of all of the property of this state in a fair, equal and uniform manner. The Legislature also finds that the success of such an ambitious and important program depends in large measure upon public confidence and assurance as to its fairness and accuracy. The revenues produced by ad valorem taxation are vital to county government, public education, and municipalities, and only upon full
compliance with the purpose and intent of the constitutional requirements may our citizens and their representatives determine the appropriate level of ad valorem taxation.

(c) It is therefore the intent of the Legislature to provide a process by which property owners, if they so desire, may inquire of and object to the results of such reappraisal and have the same reviewed and, in the proper cases, adjusted so as to reflect the true value of all property subject to ad valorem taxes prior to the implementation of such reappraisal by the Legislature. It is the further intent of the Legislature that to these ends the tax commissioner, the several county commissioners, assessors and sheriffs shall expend the maximum efforts to addressing the inquiries and complaints of taxpayers with respect to the reappraisal and in an expeditious and orderly manner seek to review 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 appraisement of property subject to ad valorem taxation and which was required by law to be appraised pursuant to the mandate set forth in Article X, Section 1b of the Constitution of this state as amended in the year one thousand nine hundred eighty-two, and shall not apply to any appraisement or reappraisement of any such property in any county or counties of this state prior to the adoption of such amendment nor subsequent to the year one thousand nine hundred eighty-seven.

§11-1B-3. Definitions.

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

(1) “Assessed property”, “taxable property” or “property” shall mean and include all real estate and personal property or interests therein which were required to be appraised pursuant to Article X, Section 1b of the Constitution of this state, as amended in the year one thousand nine hundred eighty-two (except as may be
exempted from ad valorem taxation by the provisions of Article X, Section 1a of the Constitution of this state as amended in the year one thousand nine hundred eighty-four) and any statute or statutes subsequently enacted which would implement such amendment and, with respect to real property, any and all improvements or structures thereon or attached thereto.

(2) References to the term or terms “the appraisal” or “the appraisement”, “appraisal” or “appraisement” shall mean the appraisement of property which was made or performed following the adoption of and pursuant to the amendment to Article X, Section 1b of the Constitution of West Virginia adopted in the year one thousand nine hundred eighty-two and also pursuant to article one-a of this chapter, and any modifications and revisions made thereto prior to the effective date of this article, subject however, to those exemptions subsequently granted by the amendments to Section 1a of said Article X of the Constitution adopted in the year one thousand nine hundred eighty-four.

(3) “Market value” or “true and actual value” or the unqualified word “value” shall have the same meaning ascribed thereto by the provisions of subdivision (i), section three, article one-a of this chapter.

§11-1B-4. Appraisal of property.

(a) All property as defined in section three of this article shall be appraised at its true and actual value as that term is defined in subdivision (i), section three, article one-a of this chapter.

(b) Any provision of article one-a of this chapter or of any other provision of law to the contrary notwithstanding, neither the appraisement nor the values ascertained thereby shall be used by the several county assessors, county commissions or the tax department for purposes of ad valorem tax assessments until after the thirtieth day of June, one thousand nine hundred eighty-seven except in accordance with this article.

§11-1B-5. Preparation of property list by tax commissioner; publication by sheriff.
(a) The tax commissioner shall compile a list of all separately assessed property which was subject to the appraisal. A separate list shall be compiled for each county, which list shall include the district in which the property is or was located at the time of appraisals, the owner or owners of such separately assessed item or parcel at that time and the appraisal value thereof. To the extent known by the tax commissioner, such list shall include and reflect the name of the current property owner to the extent ownership of the subject property has changed since its reappraisal. Such list shall be delivered to the several assessors, sheriffs and county commissions on or before the fifteenth day of June, one thousand nine hundred eighty-six. All proposed final appraisals shall be included in such list and shall reflect all final revisions and modifications which are made or to be made prior to such date pursuant to sections sixteen and seventeen, article one-a of this chapter with respect to property which has been subject to revisions or modifications in the value thereof, or if an appeal is pending before the county commission with respect to the value of any such property then the list shall include the last value certified by the tax commissioner to the county commission as to such property or if the value has been established by order of the county commission and a petition for writ of certiorari is still pending before the circuit court and shall have not been finally determined by the court, then the value last adopted by the county commission shall be included in the list and such fact or facts shall be separately noted in such list.

(b) The sheriff shall, upon receipt of the list required to be compiled and delivered by the tax commissioner, forthwith cause notice to be given owners that the appraisal of all property subject to ad valorem taxation within the county has been completed and that the results thereof are available to any person interested therein at the office of the assessor. Such notice shall be given in the form of a Class I-O legal advertisement in accordance with article three, chapter fifty-nine of this code and the publication area shall be the county. The assessor shall simultaneously inform the tax commis-
§11-1B-6. Notice of appraised values of real property to owner by tax commissioner; content; form.

(a) The tax commissioner shall also on or before the fifteenth day of August, one thousand nine hundred eighty-six, first mail to each owner, a notice of the amount of such appraised value of all real property subject to ad valorem taxation, as modified or revised. Such notice shall be addressed and mailed to the person or persons in whose name any and all such real property is assessed or was assessed in the year one thousand nine hundred eighty-three, or if the property has been transferred or replaced upon the tax books of the sheriff, then at the name and address reflected upon the tax tickets in the office of the sheriff of the county wherein such property is located. If such address be unknown to the tax commissioner, an alphabetical listing of such properties shall be forwarded to such sheriff on or before the fifteenth day of June, one thousand nine hundred eighty-six, and such sheriff shall provide the appropriate mailing address for each such property in the list, such completed list to be returned to the tax commissioner on or before the first day of July, one thousand nine hundred eighty-six.

(b) The notice required to be mailed by the provisions of subsection (a) of this section shall be upon uniform forms prepared by the tax commissioner and shall be of simple and readily understandable language and design. The notice shall advise each property owner that (i) an additional opportunity and final period of review is being afforded to request a review of the appraised value of the real property before the county commission prior to the final implementation of such values for ad valorem tax purposes, (ii) that an application or request for such review must be filed with the county commission not later than the second day of September, one thousand nine hundred eighty-six, (iii) that all property owners have a right to petition for review of the value placed upon such property irrespective of whether such owners had previously petitioned for review by the
county commission which had finally determined such value or whether such review process was currently pending either before the county commission or upon certiorari before the circuit court as provided in section eighteen, article one-a of this chapter, (iv) that the information and data relied upon in making the appraisal and in fixing the value of such property is available in the office of the county assessor at no cost to the property owner or other interested persons, (v) that such owner may in his or her petition or at any hearing held thereon, in addition to those matters relative to the reappraisal, present such factors or circumstances as, in the judgment of the owner, may have resulted in either an increase or decrease in the value of the property in question since the appraisal, and (vi) the description of the property which shall include, but not be limited to, the acreage and general landbook description on the landbook. Such factors or circumstances may be taken into consideration by the county assessor or county commission in fixing the assessed value thereof for the tax year for which a lien attaches on the first day of July, one thousand nine hundred eighty-seven: Provided, That such factors shall have no bearing upon the issues involved in establishing the true value of such property as established by the appraisal. Such notice shall include the information hereinbefore required and for notices affecting surface real property values shall set forth at least the following information in the form shown or as near thereto as may be practicable:

NOTICE

YOU ARE HEREBY NOTIFIED OF THE VALUE PLACED UPON YOUR PROPERTY WHICH IS IDENTIFIED BELOW. THIS VALUE RESULTS FROM THE REAPPRAISAL OF ALL PROPERTY SUBJECT TO PROPERTY TAX AS REQUIRED BY THE STATE CONSTITUTION.

COUNTY __ DIST __ MAP ___ PARCEL __ SPID ___

PROPERTY LOCATION: (Including address) ________________

____________________________________________________ DATE ________________

TAX CLASS: ___ ACCOUNT NO. ___ NOTICE: ______
TAX REAPPRAISAL

<table>
<thead>
<tr>
<th>Line</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>79</td>
<td>OWNERS NAME</td>
</tr>
<tr>
<td>80</td>
<td>MAILING ADDRESS</td>
</tr>
<tr>
<td>81</td>
<td>CITY, STATE, ZIP</td>
</tr>
<tr>
<td>82</td>
<td>DEAR PROPERTY OWNER,</td>
</tr>
<tr>
<td>83</td>
<td>IN COMPLIANCE WITH THE PROVISIONS OF</td>
</tr>
<tr>
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<td>BASED ON FAIR MARKET VALUE AS OF JULY,</td>
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<td>YOUR PROPERTY'S 1983</td>
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<td>96</td>
<td>MARKET/VALUE ................. = $_______</td>
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<td>X60%</td>
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<td>98</td>
<td>ASSESSMENT VALUE............. = $_______</td>
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<td>LESS YOUR CURRENT</td>
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<td>ASSESSED VALUE ............. = $_______</td>
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<td>ASSUMING THE TAX RATES IN YOUR COUNTY</td>
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<td>DO NOT CHANGE AND ALSO ASSUMING THAT</td>
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<td>SSESSED VALUE OF $_______ WILL BE IN-</td>
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<td>CREASED TO $_______ FOR THE YEAR ____</td>
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<td>AND WILL BE INCREASED $_______ EACH YEAR</td>
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<td>109</td>
<td>THEREAFTER FOR A TOTAL PERIOD OF TEN</td>
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<td>YEARS. BASED ON CURRENT ASSESSMENTS</td>
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<td>112</td>
<td>$_______ . IF YOUR ASSESSOR DETERMINES</td>
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<td>THAT YOUR PROPERTY HAS THE SAME VALUA-</td>
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<td>TION AS IN 1983 AND THAT THE LEVY RATES</td>
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<td>REMAIN THE SAME, THEN IN THAT EVENT</td>
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<td>116</td>
<td>YOUR TAX THE TENTH YEAR WILL BE $_______</td>
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<tr>
<td>117</td>
<td>THE VALUES, ASSESSMENTS AND AMOUNT</td>
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OF TAXES SHOWN ABOVE DO NOT INCLUDE OR TAKE INTO ACCOUNT ANY CREDIT FOR THE HOMESTEAD EXEMPTION. IF YOU ARE ELIGIBLE FOR THE HOMESTEAD EXEMPTION, NEXT YEAR'S PROPERTY TAX SHOULD BE REDUCED OR ELIMINATED.

THE VALUES SHOWN ABOVE DO NOT INCLUDE OR REFLECT ANY INCREASES OR DECREASES IN VALUE BECAUSE OF REPLACEMENT, ADDITIONS OR OTHER FACTORS OR CIRCUMSTANCES OCCURRING SINCE 1983.

IF YOU DISAGREE WITH THE VALUE PLACED UPON THE ABOVE DESCRIBED PROPERTY OR IF YOU BELIEVE CHANGES HAVE OCCURRED IN SUCH PROPERTY SINCE 1983 WHICH WOULD IN YOUR OPINION REDUCE THE VALUE OF YOUR PROPERTY, THEN YOU SHOULD PETITION THE COUNTY COMMISSION FOR REVIEW.

(c) In addition to any other notice required to be given to property owners by any provisions of this article, the sheriff shall give or provide a notice which shall advise the property owners of the fact that the right to petition for review of the value will expire on the second day of September, one thousand nine hundred eighty-six, that such petition must be filed or presented to the county commission on or before that date, and that no such petition shall be received thereafter. Such notice shall be included as a separate document within the same envelope in which tax tickets are mailed, or be delivered with such tax tickets to property owners pursuant to section eight, article one, chapter eleven-a of this code.

(d) The fact that an owner failed to receive any notice pursuant to the provisions of this article shall not affect the right of the property owner to petition for review within the time prescribed, and shall not extend the period by or during which any such petition is permitted to be filed, as provided by this article, nor serve to toll the time by which any such petition is required to be filed.

(e) The sheriff, assessor, clerk of the county commis-
sion and all other county officers shall cooperate and assist the tax commissioner in locating and ascertaining proper, correct and current addresses of all owners of property subject to ad valorem taxes in order that the mailing of the notices required by the provisions of this section or of any other provision of this article may achieve the greatest degree of proficient and accurate delivery.

(f) Nothing in this article shall be construed to diminish to any extent any responsibility on the part of any property owner or taxpayer to see to the proper, accurate and timely return of any property required to be returned or to see that any such property is assessed and taxed according to law and to the extent provided by law.

§11-1B-7. Additional newspaper, radio and television advertising required.

(a) In addition to the legal advertisement required by section five of this article and the notice requirements of section six of this article, the tax commissioner shall cause retail display advertisements, as opposed to, and other than, legal and classified advertisements, to be published in every newspaper of general circulation within each county of this state which shall generally and plainly inform the property owners and taxpayers of each county that the period to file their petition for review of the appraised value of their property for ad valorem property tax purposes expires on the second day of September, one thousand nine hundred eighty-six, and that such petitions must be filed with the county commission on or before that date. Such advertisements shall be of a size sufficient to be readily visible and apparent to the readers of such newspaper and shall be at least fifteen column inches or its equivalent and shall appear in each such newspaper in some portion thereof other than that portion devoted to legal and classified advertising. The tax commissioner shall solicit the running of such advertisement as a public service or at a reduced cost, but, in any event, the cost of all such advertising shall be paid for by the state tax commis-
times between the first day of July, one thousand nine hundred eighty-six and the twentieth day of August of said year, but not more often than once per week during such period, and shall be run a fourth and final time no earlier than the thirtieth day of August or, in the case of weekly newspapers, the edition next preceding that date. Further, the commissioner shall provide news stories to be carried and asked to be published which would inform the public of the matters required to be advertised and of which notice is required to be given by this article.

(b) In addition to the advertisement required by section six of this article and subsection (a) of this section, the tax commissioner shall arrange for radio and television advertisements to be carried by a sufficient number of stations to assure statewide coverage, which advertisements shall be designed to plainly inform the public that the period during which property owners and taxpayers are permitted to petition for review of the appraised value of their property for ad valorem property tax purposes expires on the second day of September, one thousand nine hundred eighty-six, and that such petitions must be filed with the county commission on or before that date. Such advertisements shall likewise be broadcast at least three times between the first day of July, one thousand nine hundred eighty-six and the twentieth day of August of said year and shall, if possible to arrange, be broadcast as public service advertisements, and, in any event, shall be broadcast at such hours or times calculated to maximize their exposure to the viewing and listening public. To the extent that the tax commissioner cannot arrange for such advertisements to be broadcast as public service advertisements, the cost shall be paid for by the tax commissioner.

(c) The paid advertisements required to be seen or broadcast by the provisions of this section shall not include the name of the tax commissioner or of any other public official or employee, whether elected or appointed, and such person may be referred to in such advertisements, if at all, by their title or office only.
(d) Failure of any newspaper, radio and television advertising to be published or broadcast as provided by subsection (a) or (b) shall not invalidate or impair the additional review of property appraisals provided for by this article.

§11-1B-8. Review by county commission; petition therefore; hearing; decision.

(a) Not later than the second day of September, one thousand nine hundred eighty-six, the owner of any assessed property may petition for review of the appraised value of his or her property. Such petition shall be filed with the county commission of the county wherein such property or the greater portion thereof is situate. No hearing shall be held with respect to any such petition filed or received by the county commission after the date hereinabove specified or which has not been deposited in the regular course of the United States mail, postage prepaid, and properly addressed to the county commission on or before such date. Such county commission shall forthwith mail or deliver at least weekly true copies of all such petitions to the tax commissioner and to the county assessor which shall reflect the date of filing.

(b) The state tax commissioner shall devise and make available a form which may be used as a petition by any owner or taxpayer seeking review of the appraised value of any such property. The petition shall set forth the name of the petitioner, the address or identification of the property in question, preferably reflected upon the most recent tax ticket, and the county and district wherein such property is located and shall state in general terms all matters of or to which the owner or owners take exception or believe to be in error with respect to the proposed appraised value of such property and such other matters as the owner or petitioner deems necessary to inform the county commission and the parties of the nature of such owner's complaint. The owner may also petition with respect to and raise at any time any issue, fact or circumstance which has occurred with respect to the subject property since the year one thousand nine hundred eighty-three. The petitioner may
use such form as provided by the tax commissioner or
may use his or her own petition which need not be in
any specific form so long as the nature of the complaint
and request for review can be ascertained. Such forms
as are prepared by the tax commissioner shall be made
available at the offices of the county commission, the
county clerk, the assessor and the sheriff and at such
other places in the community as the tax commissioner
may deem appropriate and may be included in or with
the notice required by section six of this article.

(c) The county commission shall sit as an administra-
tive appraisal review board as required by the provi-
sions of section seventeen, article one-a of this chapter
in review of the appraised value of the property in
question. In so doing, the county commission shall hear
such testimony under oath, and receive such other
evidence as the county commission may deem pertinent,
as the owner, the tax commissioner or other interested
person may offer, including the assessor, and shall make
a true record of the hearing and evidence presented by
nonstenographic electronic recording or other device
which will assure that the recorded testimony will be
accurately preserved. The county commission shall also
receive evidence of any substitutions, accretions, improve-
ments, additions, replacements, destructions,
removals, casualties, acts of God, waste or any like
occurrences or any similar factors or occurrences which
have caused or resulted in any change in value of any
property subject to reappraisal for use by the assessor
and the county commission in fixing values for the year
one thousand nine hundred eighty-seven. Copies or
transcriptions of the records shall be available at the
request of any of the parties who shall bear the cost
thereof. The provisions of subsections (b), (c) and (d) of
said section seventeen, article one-a shall apply to
hearings held pursuant to this article, except to the
extent the same are in direct conflict with the provisions
of this article.

(d) Any other provision of present law to the contrary
notwithstanding, the prosecuting attorney of the county
shall serve in the capacity of law advisor only to the
county commission when called upon by the county
commission to assist it with respect to questions of law
of which they may be concerned in any hearing held
pursuant to this article and shall not represent the tax
commissioner in any capacity with respect to any such
hearing.

(e) Any other provision of present law to the contrary
notwithstanding, the tax commissioner may, at his
request, be represented in any proceeding under either
article one-a or one-b of this chapter by the attorney
general, by an attorney permanently or temporarily
employed by the tax commissioner, or by an attorney
with whom the tax commissioner has contracted for
such service.

(f) The tax commissioner shall be a party to every
hearing held pursuant to this article and it shall be his
duty in such capacity to see to the equal and uniform
taxation of all species, types, items and parcels of
property subject to ad valorem taxation.

(g) Upon making such true record and preserving as
part of the record the other evidence presented, the
county commission shall determine whether the amount
of value fixed by the appraisal of the property is correct
under the circumstances. If the county commission finds
the appraisal to be correct it shall enter an order
approving the value as appraised and adopting by
reference the determination and information provided
by the tax commissioner. If the county commission
determines that the amount of value fixed by the
appraisal of the property is incorrect, and if sufficient
evidence has been presented to permit correction of the
appraisal, the county commission shall correct the
appraisal and fix the value of the appraised property.
If the county commission shall find that the evidence is
not sufficient to determine the correct value, the county
commission shall direct the parties to develop and
present such additional evidence as may be necessary
and may continue the hearing to a date and time, not
to exceed ten days, for the purpose of receiving such
evidence sufficient to fix the true and correct appraised
value. If either of the parties need more time in which
to further develop or prepare such additional evidence, then, upon so informing the other party or parties and the county commission, a further period of time, not to exceed an additional period of ten days, shall be granted for that purpose. Upon making its determination as to the true and correct appraised value, the county commission shall enter its order establishing such value, which order shall include the commission's findings and its reason or reasons therefor, and shall forward a true copy of such order to all the parties. The county commission shall transmit to the assessor those circumstances and matters which would cause a change in the value of any property for such use as may be appropriate in fixing assessed value in the year one thousand nine hundred eighty-seven. Such matters shall include, but not be limited to, those situations or circumstances required to be received by the county commission pursuant to subsection (c) of this section.

(h) Any owner whose property has been the subject of review to determine the proper value thereof pursuant to this article or article one-a of this chapter shall not be precluded from pursuing or exercising any other right or procedure, or appearing before any forum for the purpose of fixing the value of property for ad valorem tax purposes, and for that purpose neither the provisions of this article nor of article one-a of this chapter shall be deemed to afford remedies which are severally or jointly exclusive.

§11-1B-9. Agreements by owner, tax commissioner and assessor; stipulations; agreed values to be used as appraised values.

(a) At any time prior to the rendering of a decision by the county commission pursuant to section eight of this article, if the tax commissioner concludes that the appraised value of any property is incorrect or improper because of a clerical error or error of fact or mistake occasioned by inadvertence or an unintentional act as distinguished from errors or mistakes resulting from the exercise of judgment, the tax commissioner may correct such error or mistake and give notice thereof to the property owner, the appropriate assessor, county
commission and sheriff of the county wherein the property is assessed for ad valorem tax purposes.

(b) If after receipt of the copy of the owner’s petition for review before the county commission, the tax commissioner determines that the facts set forth by the property owners in his or her petition are correct, the tax commissioner may modify such value accordingly. The commissioner shall notify the owner or owners of his or her action as well as the appropriate assessor, county commission and sheriff, and in such notice shall include a new appraised value. If the owner agrees to such new appraised value he or she shall so notify the tax commissioner and the county commission. The county commission shall enter its order adopting such value as the appraised value of the property for ad valorem tax purposes. If the owner further objects to the new appraised value arrived at by the tax commissioner, he or she shall forthwith so inform the tax commissioner and the county commission, setting forth his or her reasons therefor, and the matter shall proceed to final conclusion as provided for in section eight of this article.

(c) Nothing in this section shall prevent the owners, the tax commissioner, any intervenors, the assessor or any of them from stipulating any issue or issues included in the review, nor shall any provision of this article or other provision of law prevent such parties from agreeing upon a settlement of the matters and jointly recommending to the county commission such agreements and stipulations which may be accepted or rejected by the county commission. If accepted, such agreements or stipulations shall be entered by the county commission in the manner provided in subsection (d) of this section. If the county commission rejects the agreement it shall so inform the parties and proceed with the hearing.

(d) Any agreement reached or stipulation agreed upon pursuant to this section or authorized thereby shall be presented by the parties in open hearing before the county commission or be filed with the county commission in writing to be jointly agreed upon by the parties and to be made available for public inspection. Such
presentation or writing shall include the reasons or rationale for the agreement or stipulation, and the county commission shall set forth the same in brief form in any order ratifying or confirming the same. Any agreement reached or stipulation agreed upon which shall have the direct effect of fixing the value of any property shall not be entered or accepted by the county commission and entered of record as finally fixing such value until a period of five days shall have elapsed since the day of presentation, nor shall the same be the subject of objection thereafter.

§11-1B-10. Property tax appraiser consultants; assignment; duties; recommendations to tax commissioner.

1 As soon as may be practicable after the effective date of this section, the tax commissioner may employ four persons as public property tax appraiser consultants to be of assistance to the public and available to it. The tax commissioner may assign such persons to any county or area of the state in which their assistance is required. Such consultants shall provide information, guidance, assistance and instructions to any residential, farm or other noncommercial owner or taxpayer regarding real estate and personal property tax appraiser matters. For this purpose, the consultant is authorized (i) to examine and review the records of the assessor, the sheriff and the tax commissioner upon request, (ii) to investigate matters of complaint by such residential owners or taxpayers who request his or her assistance, (iii) to make reports and recommendations to the tax commissioner with respect to any pertinent information or proposed corrections for consideration by the tax commissioner in arriving at the true and correct value of such property as hereinafter provided, and (iv) to act with respect to such other matters as may be of assistance to any such residential owners or taxpayers in understanding and resolving issues concerning such value. Such persons shall be individuals who are experienced in dealing with the public in a congenial and courteous manner and who are knowledgeable with property and property values in the area in which he
If at any time the tax commissioner determines, based upon, or as a result of, reports of or consultations with the consultants, that a modification or adjustment of the appraised value of any property is indicated, the tax commissioner shall so notify the taxpayer, consultant and assessor of the proposed modification or adjustment. If the residential owner shall agree to the proposed modification or adjustment, the tax commissioner shall modify or adjust the value accordingly. If the tax commissioner disagrees with the recommendations or reports of the consultant, he or she shall immediately so notify the owner and consultant of that fact, and the matter shall be resolved as otherwise provided in this article.

§11-1B-11. The right of other property owners or assessor to petition for review or intervene.

(a) Any person who is a taxpayer of ad valorem property taxes in any West Virginia county may protest an appraisal of property under this article for good cause alleged and shown. A person desiring to protest an appraisal of property shall petition for a hearing before the county commission in the same manner as an owner would petition for review and hearing with regard to the appraisal of his property as provided in this article: Provided, That a petition for protest must be filed with the county commission no later than the second day of September, one thousand nine hundred eighty-six. The hearing of a protest shall be governed by the same procedures described for hearings before the county commission in section eight of this article and notice of such shall be given as required by subsection (d) of this section.

(b) Upon a showing of good cause, any person who is a taxpayer of ad valorem property taxes in any West Virginia county may be permitted to intervene by petition in writing in the hearing provided for in this section.

(c) In the event any person shall petition for review of or protest to the appraisal value of or given to the
property of another, or in the event of intervention pursuant to this section, the owner of such property shall be given all rights afforded by this article, including the right to protection for review by cross petition or otherwise, to the same extent as if the owner had appealed or petitioned timely in the first instance.

(d) Any petition filed pursuant to subsection (a) or (b) of this section shall be filed in writing and shall set forth the objections of the petitioner or intervenor to the appraisal in question or at issue. A copy of such petition shall be served upon, mailed to or delivered to the property owner and the tax commissioner, and there shall be appended thereto the certificate of the petitioner or intervenor or of his or her attorney stating that true copies of such petition have been served upon or mailed or delivered to such property owner and tax commissioner no later than the same date upon which such copies were so mailed, delivered or served.

§11-1B-12. Time of decision by county commission.

All review hearings conducted by county commissions sitting for the purposes of this article shall be completed and determinations rendered thereon by the first day of December, one thousand nine hundred eighty-six. The county commission may consolidate hearings and reviews in order to avoid duplication and unnecessary repetition where the same or similar facts or issues are in dispute.

§11-1B-13. Duty of assessor to assist county commission; inventory of flood damaged property.

(a) The county commission, sitting in review of appraisals pursuant to this article, may require the assistance of the county assessor in making its determinations under this article. Further, the assessor shall be competent to testify as to values of property generally or as to the value of a specific item of property when called upon to do so by either of the parties or the county commission.

(b) It shall be the additional duty of the assessor in
the counties of Barbour, Berkeley, Braxton, Calhoun, Doddridge, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jefferson, Lewis, Marion, Mineral, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pocahontas, Preston, Randolph, Summers, Taylor, Tucker, Tyler, Upshur and Webster to prepare an inventory of all property damaged as a result of the flood which occurred in those counties during the month of November, one thousand nine hundred eighty-five, to the extent of damage thereto, which shall be noted for such use as may be proper with respect to any future assessments of any such property.

§11-1B-14. Review by circuit court on certiorari.

Within thirty days after the day the county commission notifies the parties of a final determination of value made pursuant to section eight of this article, the owner, tax commissioner, protestor or intervenor may request the county commission to certify the evidence and remove and return the record to the circuit court of the county on a writ of certiorari instituted in accordance with the provisions of article three, chapter fifty-three of this code. For purposes of this article, the recorded testimony of the hearing, when certified by the county commission may be used by the circuit court as the transcript of testimony. If the petition for review be made by the tax commissioner or the assessor as to two or more separate items or parcels of property and for separate property owners, all such matters may be included within one petition if each separate owner is notified thereof and given opportunity to respond thereto. Except to the extent the same is in direct conflict with the provisions of this section, the provisions of section eighteen, article one-a of this chapter shall govern reviews by circuit courts of any proceedings brought under this article.

§11-1B-15. Right of tax commissioner, assessor or property owner to review of newly discovered matters; limitations.

(a) The tax commissioner, the assessor or any prop-
property owner at any time after the second day of September, one thousand nine hundred eighty-six, and before the first day of October of said year shall have the right to petition the county commission to reopen and review in accordance with the provisions of this article. In the event the tax commissioner or assessor so petitions the county commission, the owner of the property shall forthwith be notified of the petition by mailing or delivering a true copy thereof to such owner. Similarly, if the owner petitions the county commission in accordance herewith, he or she shall likewise notify the tax commissioner and the assessor of that fact. It shall be the affirmative burden of the petitioning party to clearly show that the matters raised in the petition were newly discovered since the first day of September, one thousand nine hundred eighty-six and were therefore unknown to the parties so petitioning.

(b) The assessor shall petition the county commission to adjust the appraised value of any parcel where that value appears to be clearly in error or based upon inconsistencies in valuation procedures, trends in valuation, clerical errors or other cause. Notice of any petition filed by the assessor shall be given to any affected owner and the tax commissioner. A hearing held pursuant to such petition shall be governed by the same procedures described for review and hearings as provided for in section eight of this article.

§11-1B-16. Reimbursement of costs to assessor and sheriff.

Except for the mailing required by subsection (c), section six of this article, the assessor and sheriff shall be reimbursed by the tax commissioner for the postage expended by either of them to mail any notices required to be mailed by such assessor or sheriff by this article. Such forms and envelopes as may be required shall be furnished by the tax commissioner.

§11-1B-17. Report by county commission required; reports to Legislature.

The county commission shall make a report to the tax commissioner on or before the thirty-first day of
December, one thousand nine hundred eighty-six, of the number of hearings held by it in review of any and all appraisals and any adjustments in valuation made by the county commission. The tax commissioner shall provide a summary of such reports to the President of the Senate and the Speaker of the House of Delegates on or before the fifteenth day of January, one thousand nine hundred eighty-seven.

§11-1B-18. Appraisal of property; date of implementation; assessor to make assessments.

(a) All property as defined in section three of this article shall be appraised at its true and actual value as that term is defined in subsection (i), section three, article one-a of this chapter.

(b) Upon completion of the review procedures provided in this article, and after certification by the tax commissioner to the governor, President of the Senate and Speaker of the House of Delegates that, with the exception of those matters pending in the circuit courts of this state or on appeal to the supreme court of appeals, said review procedures have been substantially complied with and further that the results thereof are substantially correct, the final valuations arrived at, by, and through the appraisal process to establish value of all property for the year one thousand nine hundred eighty-three, as provided for in article one-a of this chapter and by this article, shall be and the same are hereby directed to be used for ad valorem property taxation in the year for which lien would attach on the first day of July, one thousand nine hundred eighty-seven. Such valuations shall be adjusted by the assessor to reflect consideration of such substitutions, alterations, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or like occurrences or circumstances, as well as economic and other factors which result in or cause an increase or decrease in the value of any such property or any other divisions, redivision or other change in such property since its reappraisal for the year one thousand nine hundred eighty-three.
In the implementation of such values, the assessor of each of the several counties shall assess the property subject to ad valorem taxation (other than public utility property) in the manner and subject to the procedures for return, assessment, equalization and review heretofore provided in this code, at sixty percent of the market value less such exemptions and allowance for phase-in which may be applicable.

With respect to property, the market value of which has changed since the reappraisal, the assessor shall enter on the computer network provided for by section twenty-one, article one-a of this chapter, the basis of any change in value utilized in such assessment.

With respect to property not subject to reappraisal at the time of the reappraisal, or property on which improvements have been made, the assessor shall use as a basis for phase-in of the reappraisal, the statewide phase-in rate promulgated by the tax commissioner for like property.

(c) The tax commissioner shall be provided by the assessor with any information, findings, or reasons relied upon by the assessor in increasing or decreasing values as a result of economic or other factors if applied by the assessor to any species or class of property 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.]
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.


1 The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:
2 (1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection therewith, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;
3 (2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;
4 (3) To close any school which is unnecessary and to assign the pupils thereof to other schools: Provided, That such closing shall be officially acted upon and teachers and service personnel involved notified on or before the first Monday in April, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision
(5) of this section;
(4) To consolidate schools;
(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the school so closed are not transferred or reassigned to other schools, they shall receive one month’s salary;
(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such regulations as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto, at public expense, by rules and regulations and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules and regulations established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by such commission, or the local or county chapter thereof: Provided, however, that in all cases the buses or other transportation facilities owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided further, That buses shall be used for extracurricular activities as herein provided only when the insurance provided for by this section shall have been effected;
(b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of subdivisions (6) and (8) of this section;
(7) To lease school buses operated only by drivers regularly employed by the board to public and private nonprofit organizations or private corporations to
transport school-age children to and from camps or educational activities in accordance with rules and regulations established by the board. All costs and expenses incurred by or incidental to the transportation of such children shall be borne by the lessee;

(8) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils be contracted, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify;

(9) To provide solely from county funds for all regular full-time employees of the board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act;

(10) To employ teacher aides, to provide in-service training for teacher aides, the training to be in accordance with rules and regulations of the state board and, in the case of service personnel assuming duties as teacher aides in exceptional children's programs, to provide a four-clock-hour program of training prior to such assignment which shall, in accordance with rules and regulations of the state board, consist of training in areas specifically related to the education of exceptional children;

(11) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach therein;

(12) To employ legal counsel;

(13) To provide appropriate uniforms for school service personnel;

(14) To provide at public expense and under regulations as established by any county board of education for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by such county board of education;

(15) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, That such usage is subject to the supervision of such board and is directly connected with and required by the nature and in
the performance of such employee's duties and responsibilities; and
(16) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees.

"Quasi-public fund" as used herein means any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

The board of each county shall expend under such regulations as it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.


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.

(a) The board shall have general supervision and control over the insurance of all state property, activities and responsibilities, including the acquisition and cancellation thereof; determination of amount and kind of coverage, including, but not limited to, deductible forms of insurance coverage, inspections or examinations relating thereto, reinsurance, and any and all matters, factors and considerations entering into negotiations for advantageous rates on and coverage of all such state property, activities and responsibilities. Any policy of insurance purchased or contracted for by the board shall provide that the insurer shall be barred and estopped from relying upon the constitutional immunity of the state of West Virginia 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
charitable or public service organization, the board is authorized to provide property and liability insurance to the political subdivisions or such organizations to insure their property, activities and responsibilities. Such board is authorized to enter into any necessary contract of insurance to further the intent of this subsection.

The property insurance provided by the board, pursuant to this subsection, may also include insurance on property leased to or loaned to the political subdivision or such organization which is required to be insured under a written agreement.

The cost of this insurance, as determined by the board, shall be paid by the political subdivision or the organization and may include administrative expenses. All funds received by the board shall be deposited in the West Virginia consolidated investment pool with the interest income a proper credit to such property insurance trust fund or liability insurance trust fund, as applicable.

Political subdivision as used in this subsection shall have the same meaning as in section three, article twelve-a of this chapter.

Charitable or public service organization as used in this subsection means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the state department of corrections.

In accordance with the provisions of this article, the state board of risk and insurance management shall provide appropriate professional or other liability insurance for all county boards of education, teachers, supervisory and administrative staff members, service personnel, county
superintendents of schools and school board members and for all employees and officers of the state department of corrections. Said insurance shall cover any claim, demand, action, suit or judgment by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the department of corrections was acting in the discharge of his duties, within the scope of his office, position or employment, under the direction of the board of education or commissioner of corrections or in an official capacity as a county superintendent or as a school board member or as commissioner of corrections. Such insurance coverage shall be in an amount to be determined by the state board of risk and insurance management, but in no event less than one million dollars for each occurrence. In addition, each county board of education shall purchase, through the board of risk and insurance management, excess coverage of at least five million dollars for each occurrence. The cost of this excess coverage will be paid by the respective county boards of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

The insurance policy shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well as a provision for the payment of the cost of attorney’s fees in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

The county superintendent and other school personnel shall be defended by the county board or an insurer in the case of suit, unless the act or omission shall not have been within the course or scope of employment or official responsibility or was motivated by malicious or criminal intent.

ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT.

§29-12A-1. Short title; purposes.
§29-12A-2. Legislative findings.


§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-10. Enforcement of judgment.


§29-12A-12. Recovery of payments from employees.

§29-12A-13. Venue; parties; real party in interest; service of process.


§29-12A-17. Liability insurance rates; rate filings; cancellations; group insurance.


§29-12A-1. Short title; purposes.

1 This article shall be known and may be cited as "The Governmental Tort Claims and Insurance Reform Act."

2 Its purposes are to limit liability of political subdivisions and provide immunity to political subdivisions in certain instances and to regulate the costs and coverage of insurance available to political subdivisions for such liability.

§29-12A-2. Legislative findings.

1 The Legislature finds and declares that the political subdivisions of this state are unable to procure adequate liability insurance coverage at a reasonable cost due to: The high cost in defending such claims, the risk of liability beyond the affordable coverage, and the inability of political subdivisions to raise sufficient revenues for the procurement of such coverage without reducing the quantity and quality of traditional governmental services.

2 Therefore, it is necessary to establish certain immunities and limitations with regard to the liability of political subdivisions and their employees, to regulate the insurance industry providing liability insurance to them, and thereby permit such political subdivisions to provide necessary and
needed governmental services to its citizens within the
limits of their available revenues.


As used in this article:

(a) "Employee" means an officer, agent, employee, or
servant, whether compensated or not, whether full-time or
not, who is authorized to act and is acting within the scope
of his or her employment for a political subdivision.
"Employee" includes any elected or appointed official of a
political subdivision. "Employee" does not include an
independent contractor of a political subdivision.

(b) "Municipality" means any incorporated city, town
or village and all institutions, agencies or instrumentalities
of a municipality.

(c) "Political subdivision" means any county
commission, municipality and county board of education;
any separate corporation or instrumentality established by
one or more counties or municipalities, as permitted by law;
any instrumentality supported in most part by
municipalities; any public body charged by law with the
performance of a government function and whose
jurisdiction is coextensive with one or more counties, cities
or towns; a combined city-county health department
created pursuant to article two, chapter sixteen of this code;
public service districts; and other instrumentalities
including, but not limited to, volunteer fire departments
and emergency service organizations as recognized by an
appropriate public body and authorized by law to perform a
government function: Provided, That hospitals of a
political subdivision and their employees are expressly
excluded from the provisions of this article.

(d) "Scope of employment" means performance by an
employee acting in good faith within the duties of his or her
office or employment or tasks lawfully assigned by a
competent authority but does not include corruption or
fraud.

(e) "State" means the state of West Virginia, including,
but not limited to, the Legislature, the supreme court of
appeals, the offices of all elected state officers, and all
departments, boards, offices, commissions, agencies,
colleges, and universities, institutions, and other
instrumentalities of the state of West Virginia. "State" does
not include political subdivisions.

§29-12A-4. Governmental and proprietary functions of political subdivisions; liability for damages.

(a) The distinction existing between governmental functions and proprietary functions of political subdivisions is not affected by the provisions of this article; however, the provisions of this article shall apply to both governmental and proprietary functions.

(b) (1) Except as provided in subsection (c) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function: Provided, That this article shall not restrict the availability of mandamus, injunction, prohibition, and other extraordinary remedies.

(2) Subject to statutory limitations upon their venue and jurisdiction, the circuit courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this article.

(c) Subject to sections five and six of this article, a political subdivision is liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this article, political subdivisions are liable for injury, death, or loss to persons or property caused by the negligent operation of any vehicle by their employees when the employees are engaged within the scope of their employment and authority.

(2) Political subdivisions are liable for injury, death, or loss to persons or property caused by the negligent performance of acts by their employees while acting within the scope of employment.

(3) Political subdivisions are liable for injury, death, or loss to persons or property caused by their negligent failure to keep public roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivisions open, in repair, or free from nuisance, except that it is a full defense to such
liability, when a bridge within a municipality is involved,
that the municipality does not have the responsibility for
maintaining or inspecting the bridge.

(4) Political subdivisions are liable for injury, death, or
loss to persons or property that is caused by the negligence
of their employees and that occurs within or on the grounds
of buildings that are used by such political subdivisions,
including, but not limited to, office buildings and
courthouses, but not including jails, places of juvenile
detention, workhouses, or any other detention facility.

(5) In addition to the circumstances described in
subsections (1) to (4), subsection (c) of this section, a political
subdivision is liable for injury, death, or loss to persons or
property when liability is expressly imposed upon the
political subdivision by a provision of this code. Liability
shall not be construed to exist under another section of this
code merely because a responsibility is imposed upon a
political subdivision or because of a general authorization
that a political subdivision may sue and be sued.

§29-12A-5. Immunities from liability.

(a) A political subdivision is immune from liability if a
loss or claim results from:

1. Legislative or quasi-legislative functions;
2. Judicial, quasi-judicial or prosecutorial functions;
3. Execution or enforcement of the lawful orders of any
court;
4. Adoption or failure to adopt a law, including, but not
limited to, any statute, charter provision, ordinance,
resolution, rule, regulation or written policy;
5. Civil disobedience, riot, insurrection or rebellion or
the failure to provide, or the method of providing, police,
law enforcement or fire protection;
6. Snow or ice conditions or temporary or natural
conditions on any public way or other public place due to
weather conditions, unless the condition is affirmatively
caused by the negligent act of a political subdivision;
7. Natural conditions of unimproved property of the
political subdivision;
8. Assessment or collection of taxes lawfully imposed
or special assessments, license or registration fees or other
fees or charges imposed by law;
9. Licensing powers or functions including, but not
limited to, the issuance, denial, suspension or revocation of
or failure or refusal to issue, deny, suspend or revoke any
permit, license, certificate, approval, order or similar
authority;
(10) Inspection powers or functions, including failure to
make an inspection, or making an inadequate inspection, of
any property, real or personal, to determine whether the
property complies with or violates any law or contains a
hazard to health or safety;
(11) Any claim covered by any workers' compensation
law or any employer's liability law;
(12) Misrepresentation, if unintentional;
(13) Any court-ordered or administratively approved
work release or treatment or rehabilitation program;
(14) Provision, equipping, lawful operation or
maintenance of any prison, jail or correctional facility, or
injuries resulting from the parole or escape of a prisoner;
(15) Any claim or action based on the theory of
manufacturer's products liability or breach of warranty or
merchantability or fitness for a specific purpose, either
expressed or implied;
(16) The operation of dumps, sanitary landfills, and
facilities where conducted directly by a political
subdivision; or
(17) The issuance of revenue bonds or the refusal to
issue revenue bonds.

(b) An employee of a political subdivision is immune
from liability unless one of the following applies:
(1) His or her acts or omissions were manifestly outside
the scope of employment or official responsibilities;
(2) His or her acts or omissions were with malicious
purpose, in bad faith, or in a wanton or reckless manner; or
(3) Liability is expressly imposed upon the employee by
a provision of this code.

(c) The immunity conferred upon an employee by
subsection (b) of this section does not affect or limit any
liability of a political subdivision for an act or omission of
the employee.

§29-12A-6. Limitation of actions; specification of amount of
damages not allowed.

(a) An action against a political subdivision to recover
damages for injury, death, or loss to persons or property allegedly caused by any act or omission in connection with a governmental or proprietary function, except as provided in subsection (b) of this section, shall be brought within two years after the cause of action arose or after the injury, death or loss was discovered or reasonably should have been discovered, whichever last occurs or within any applicable shorter period of time for bringing the action provided by this code. This section applies to actions brought against political subdivisions by all persons, governmental entities, and the state.

(b) An action against a political subdivision to recover damages for injury, death, or loss to a minor, brought by or on behalf of a minor who was under the age of ten years at the time of such injury, shall be commenced within two years after the cause of action arose or after the injury, death or loss was discovered or reasonably should have been discovered, whichever last occurs, or prior to the minor's twelfth birthday, whichever provides the longer period.

(c) The periods of limitations set forth in this section shall be tolled for any period during which the political subdivision or its representative has committed fraud or collusion by concealing or misrepresenting material facts about the injury.

(d) In the complaint filed in a civil action against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by an act or omission of such political subdivision or employee, whether filed in an original action, cross-claim, counterclaim, third-party claim, or claim for subrogation, the complainant shall include a demand for a judgment for the damages that the judge in a nonjury trial or the jury in a jury trial finds that the complainant is entitled to be awarded, but shall not specify in the demand any monetary amount for damages sought.

§29-12A-7. Punitive damages not allowed; limitation on non-economic loss; joint and several liability.

Notwithstanding any other provisions of this code or rules of a court to the contrary, in an action against a
political subdivision or its employee to recover damages for injury, death, or loss to persons or property for injury, death, or loss to persons or property caused by an act or omission of such political subdivision or employee:

(a) In any civil action involving a political subdivision or any of its employees as a party defendant, an award of punitive or exemplary damages against such political subdivision is prohibited.

(b) There shall not be any limitation on compensatory damages that represent the economic loss of the person who is awarded the damages. However, damages awarded that arise from the same cause of action, transaction or occurrence, or series of transactions or occurrences that represent noneconomic loss shall not exceed five hundred thousand dollars in favor of any one person. The limitation on damages that do not represent the economic loss of the person who is awarded the damages provided in this subsection does not apply to court costs that are awarded to a plaintiff or to interest on a judgment rendered in favor of a plaintiff in an action against a political subdivision or its employees.

(c) In the trial of an action covered by the provisions of this article involving multiple defendants, the jury shall be required to report its findings to the court on a form provided by the court which contains each of the possible verdicts as determined by the court.

(d) In every such action, the court shall make findings as to the total dollar amount awarded as damages to each plaintiff. The court shall enter judgment of joint and several liability against every defendant who bears twenty-five percent or more of the negligence attributable to all defendants. The court shall enter judgment of several, but not joint, liability against and among all defendants who bear less than twenty-five percent of the negligence attributable to all defendants.

(e) Each defendant against whom a judgment of joint and several liability is entered in an action pursuant to subsection (d) of this section is liable to each plaintiff for all or any part of the total dollar amount awarded regardless of the percentage of negligence attributable to him. A right of contribution exists in favor of each defendant who has paid to a plaintiff more than the percentage of the dollar amount
awarded attributable to him relative to the percentage of negligence attributable to him. The total amount of recovery for contribution is limited to the amount paid by the defendant to a plaintiff in excess of the percentage of the total dollar amount awarded attributable to him relative to the percentage of negligence attributable to him. No right of contribution exists against any defendant who entered into a good faith settlement with the plaintiff prior to the jury’s report of its findings to the court or the court’s findings as to the total dollar amount awarded as damages. 

(f) Where a right of contribution exists in an action pursuant to subsection (e) of this section, the findings of the court or jury as to the percentage of negligence and liability of the several defendants to the plaintiff shall be binding among such defendants as determining their rights of contribution.


Any person having a claim against a political subdivision within the scope of this article may sue such political subdivision for any appropriate relief including the award of money damages within the liability limitations established in section seven of this article.

§29-12A-9. Settlement or defense of suit; effect of liability insurance.

(a) If a policy or contract of liability insurance covering a political subdivision or its employees is applicable, the terms of the policy govern the rights and obligations of the political subdivision and the insurer with respect to the investigation, settlement, payment and defense of suits against the political subdivision, or its employees, covered by the policy. The insurer may not enter into a settlement for an amount which exceeds the insurance coverage.

(b) A political subdivision, or its employees, are not liable for any costs, judgments or settlements paid through an applicable contract or policy of insurance.

(c) A political subdivision has the right of indemnity against the insurer issuing any applicable contract or policy of insurance to the monetary limit of the contract or policy of insurance.
§29-12A-10. Enforcement of judgment.

(a) Real or personal property, and moneys, accounts, deposits, or investments of a political subdivision are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision in a civil action to recover damages for injury, death, or loss to persons or property caused by an act or omission of the political subdivision or any of its employees.

(b) Such judgments shall be paid from funds of the political subdivisions that have been appropriated for that purpose. However, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year.

(c) If the judgment is obtained against a political subdivision that has procured a contract or policy of liability or indemnity insurance protection, the holder of the judgment may use the methods of collecting the judgment which are provided by the policy or contract or law to the extent of the limits of coverage provided.


(a) (1) Except as otherwise provided in this section, a political subdivision shall provide for the defense of an employee, in any state or federal court, in any civil action or proceeding to recover damages for injury, death, or loss to persons or property allegedly caused by an act or omission of the employee if the act or omission occurred or is alleged to have occurred while the employee was acting in good faith and not manifestly outside the scope of his employment or official responsibilities. Amounts expended by a political subdivision in the defense of its employees shall be from funds appropriated for this purpose or pursuant to the contractual agreement between the insurer and the political subdivision. The duty to provide for the defense of an employee specified in this subsection does not
apply in a civil action or proceeding that is commenced by
or on behalf of a political subdivision.

(2) Except as otherwise provided in this section, a
political subdivision shall indemnify and hold harmless an
employee in the amount of any judgment that is obtained
against the employee in a state or federal court or as a result
of a law of a foreign jurisdiction and that is for damages for
injury, death, or loss to persons or property caused by an act
or omission of such employee, if at the time of the act or
omission the employee was acting in good faith and within
the scope of his employment or official responsibilities.

(b) (1) A political subdivision may enter into a consent
judgment or settlement and may secure releases from
liability for itself or an employee, with respect to any claim
for injury, death, or loss to persons or property caused by an
act or omission of such political subdivision or employee.

(2) No action or appeal of any kind shall be brought by
any person, including any employee or a taxpayer, with
respect to the decision of a political subdivision pursuant to
subsection (1), subsection (b) of this section whether to
enter into a consent judgment or settlement or to secure
releases, or concerning the amount and circumstances of
a consent judgment or settlement. Amounts expended for
any settlement shall be from funds appropriated for this
purpose or pursuant to the contractual agreement
between the insurer and the political subdivision.

(c) If a political subdivision refuses to provide an
employee with a defense in a civil action or proceeding
as described in subdivision (1), subsection (a) of this
section, the employee may file, in the circuit court of the
county in which the political subdivision is located, an
action seeking a determination as to the appropriateness
of the refusal of the political subdivision to provide him
or her with a defense under that subsection.

§29-12A-12. Recovery of payments from employees.

A political subdivision has the right to recover from an
employee for any claim or action under this article, or any
other claim or action, any payments made by it for any
judgment or settlement, or portion thereof, and costs or fees
by or on behalf of an employee's defense if it is shown that
the conduct of the employee which gave rise to the claim or
action was outside the scope of his employment or if the employee fails to cooperate in good faith in the defense of the claim or action. A judgment or settlement in an action or claim under this article constitutes a complete bar to any action by a claimant against an employee whose conduct gave rise to the claim resulting in such judgment or settlement.

§29-12A-13. Venue; parties; real party in interest; service of process.

(a) Actions against all political subdivisions within the scope of this article shall be brought in the county in which the situs of the political subdivision is located or in the county in which the cause of action arose.

(b) Suits instituted pursuant to the provisions of this article shall name as defendant the political subdivision against which liability is sought to be established. In no instance may an employee of a political subdivision acting within the scope of his employment be named as defendant.

(c) All actions filed against a political subdivision shall be filed in the name of the real party or parties in interest and in no event may any claim be presented or recovery be had under the right of subrogation.

(d) In suits against political subdivisions, the complaint and summons shall be served in the manner prescribed by law for the rules of civil procedure.


The laws and statutes of this state and the rules of civil procedure, as promulgated and adopted by the supreme court of appeals, insofar as applicable and to the extent that such rules are not inconsistent with the provisions of this article, apply to and govern all actions brought under the provisions of this article.


This article does not apply to any claim against any political subdivision or its employees arising before the effective date of this article. Any such claim may be presented and enforced to the same extent and subject to the same procedures and restrictions as if this article had not been adopted.

(a) A political subdivision may use public funds to secure insurance with respect to its potential liability and that of its employees in damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees, including insurance coverage procured through the state board of risk and insurance management. The insurance may be at the limits, for the circumstances and subject to the terms and conditions that are determined by the political subdivision in its discretion.

The insurance may be for the period of time that is set forth in specifications for competitive bids or, when competitive bidding is not required, for the period of time that is mutually agreed upon by the political subdivision and insurance company. The period of time does not have to be, but can be, limited to the fiscal cycle under which the political subdivision is funded and operates.

(b) Regardless of whether a political subdivision procures a policy or policies of liability insurance pursuant to subsection (a) of this section or otherwise, the political subdivision may establish and maintain a self-insurance program relative to its potential liability and that of its employees in damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees. If it so chooses, the political subdivision may contract with any person, other political subdivision, or regional council of governments for purposes of the administration of such a program.

(c) Political subdivisions that have established self-insurance programs relative to their potential liability and that of their employees as described in subsection (b) of this section may mutually agree that their self-insurance programs will be jointly administered in a specified manner.

(d) The purchase of liability insurance, or the establishment and maintenance of a self-insurance program, by a political subdivision does not constitute a waiver of any immunity it may have pursuant to this article.
or any defense of the political subdivision or its employees.

(e) The authorization for political subdivisions to secure
insurance and to establish and maintain self-insurance
programs as set out in subsections (a) and (b) in this section
are in addition to any other authority to secure insurance or
to establish and maintain self-insurance that is granted
pursuant to this code or the constitution of this state, and
they are not in derogation of any other authorization.

(f) The commissioner of insurance shall promulgate
legislative rules or regulations pursuant to chapter twenty-
five-a of this code, setting forth guidelines relating to
self-insurance programs for political subdivisions.

§29-12A-17. Liability insurance rates; rate filings;
cancellations; group insurance.

(a) Liability insurance coverage for political
subdivisions in effect on the effective date of this article
shall not be reduced without the written consent of the
insured and the policy premiums for such coverage shall not
be increased by more than ten percent per annum. Such
coverage shall not be canceled except for:

(1) Failure to make premium payments in accordance
with the policy requirements;

(2) Fraud or substantial misrepresentation by the
insured in the procurement of the policy; or

(3) Substantial increase in the risk of loss to which the
insurer is exposed under the policy.

(b) Each casualty insurance rate filing relating to
liability insurance for political subdivisions shall be
accompanied by such information as the insurance
commissioner requires to determine claims payouts,
premium income, investment income, loss reserves, federal
and state credits, administrative and operating expenses,
profits, losses, and such other information deemed
necessary by the commissioner to determine the
profitability of such insurance business engaged in by the
company. Based upon such information, the commissioner
may approve or disapprove an increase in premiums
charged to the political subdivisions for such coverage or
may require that such premiums charged be decreased. The
commissioner shall have authority to disapprove any casualty insurance rate filing which includes such coverage to political subdivisions for failure to provide the information prescribed herein.

(c) Any two or more political subdivisions shall have authority to form an organization or association for the purpose of purchasing casualty insurance on a group or pooling basis.

Any insurer licensed to transact casualty insurance in this state may issue group casualty insurance policies to any organization, association or pool which is organized and maintained under this section.

(d) The insurance commissioner shall promulgate legislative rules or regulations pursuant to chapter twenty-nine-a of this code setting forth guidelines relating to rate filings, rates and cancellations with respect to insurance companies transacting policies of casualty insurance with political subdivisions and relating to establishment of associations or pools for the purchase of group insurance and the setting of group rates.


This article does not apply to, and shall not be construed to apply to, the following:

(a) Civil actions that seek to recover damages from a political subdivision or any of its employees for contractual liability;

(b) Civil actions by an employee, or the collective bargaining representative of an employee, against his or her political subdivision relative to any matter that arises out of the employment relationship between the employee and the political subdivision;

(c) Civil actions by an employee of a political subdivision against the political subdivision relative to wages, hours, conditions, or other terms of his or her employment;

(d) Civil actions by sureties, and the rights of sureties, under fidelity or surety bonds;

(e) Civil claims based upon alleged violations of the constitution or statutes of the United States except that the provisions of section eleven of this article shall apply to 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.

Any policy or contract of public liability insurance providing coverage for public liability sold, issued, or delivered in this state to any religious or charitable corporation or association, either directly or to the trustees of such associations, shall be read so as to contain a provision of endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense, on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of such insured’s charitable status, unless such provision or 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. Vetoes 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 restructuring 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.

(a) The Legislature finds that the recent increase in the number of persons engaging in the sport of white-water rafting has resulted in overcrowding, safety and ecological problems along areas and portions of rivers and waters in this state necessitating the study, investigation and regulation of whitewater rafting to promote the safe and equitable enjoyment of this sport by all persons seeking to engage in it as recreational activity. The Legislature further finds it desirable to require the director of the department of natural resources, pending such study and investigation and the promulgation of necessary rules and regulations applicable to such areas and portions of rivers and waters, to restrict, deny or postpone the issuance of licenses to additional commercial whitewater outfitters seeking to operate in such areas and portions of rivers and waters in this state until the promulgation of such rules and regulations applicable thereto and to provide for the creation of an advisory board to promulgate such rules and regulations.

(b) The director shall investigate and study commercial whitewater rafting, outfitting and activities related thereto, which rafting, outfitting or activities take place along the rivers or waters of this state. The director shall designate any such rivers or waters or any portion thereof, which herein are referred to as “whitewater zones” for which commercial whitewater rafting, outfitting and activities are to be investigated and studied, and shall determine the order and the periods of time within which such investigations and studies are to be conducted. The director shall first investigate and study those whitewater zones which the director finds to present serious problems requiring immediate regulation, including without limitation, safety hazards and problems of overcrowding or environmental misuse.

(c) Upon the filing of a written notice to be entered upon the records of the department containing the designation and reasonable description of the white-
water zone to be investigated and studied pursuant to subsection (b) above, the director may not issue licenses to additional commercial whitewater outfitters seeking to operate in or for the whitewater zone described in the notice. This limitation on additional licenses shall continue until the director has completed investigation and study of the whitewater zone designated in the notice and the rules and regulations applicable to such zone are promulgated in accordance with this section: Provided, That the director may issue additional licenses for such whitewater zones during the study period and prior to the promulgation of the rules and regulations applicable to a zone, if the director finds that such license would not interfere with the conduct of the pending investigation and study, and the issuance of such additional license is in the best interests of persons seeking to enjoy whitewater rafting and the interests of the state in promotion of tourism and the recreational and ecological use of the state's natural resources.

(d) The annual license fees set forth in section twenty-six of this article for commercial whitewater outfitters and such annual fee shall be two hundred fifty dollars for each commercial whitewater outfitter. In addition to such annual license fee, each commercial whitewater outfitter, operating within a whitewater zone under investigation and study as provided in subsection (c) of this section, shall pay to the director the sum of two hundred fifty dollars as a special study fee which shall be paid within three months after the date of the notice and designation of the whitewater zone to be studied. The annual license fee and the special study fee may be used to offset and pay for the expenses and costs of such investigations and studies and the promulgation of rules and regulations pursuant to this section.

(e) Upon official designation by the director of the first whitewater zone to be studied as provided in subsection (b) of this section, the director shall appoint a commercial whitewater advisory board. Such board shall consist of two staff employees of the department; the commissioner of the department of commerce; the superintendent of the New River Gorge National Park
or his designee; and three persons representing three
different licensed commercial whitewater outfitters
currently operating within the state: Provided, That one
person shall represent the small commercial whitewater
rafting outfitters in West Virginia which are those
outfitters who have a license allotment, as of the first
day of July, one thousand nine hundred eighty-five, of
less than one hundred persons on streams or rivers
where total use is limited; and three residents of the
state who represent the consumers of commercial
whitewater rafting in the state, one of whom shall
represent the private river users: Provided, however,
That for purposes of the appointment of the commercial
whitewater outfitters and consumer members of the
board, there shall be designated three regions within the
state as follows: Region one, the counties of Jackson,
Roane, Calhoun, Gilmer, Lewis, Upshur, Randolph,
Tucker, Barbour, Preston, Taylor, Monongalia, Marion,
Harrison, Doddridge, Ritchie, Wirt, Wood, Pleasants,
Tyler, Wetzel, Marshall, Ohio, Brooke and Hancock;
region two, the counties of Greenbrier, Pocahontas,
Pendleton, Hardy, Grant, Mineral, Hampshire, Morgan,
Berkeley and Jefferson; region three, the counties of
Mason, Putnam, Kanawha, Clay, Braxton, Webster,
Nicholas, Fayette, Summers, Monroe, Mercer, Raleigh,
Wyoming, McDowell, Mingo, Logan, Boone, Wayne,
Cabell and Lincoln. The director shall appoint the
members representing commercial whitewater outfitters operating in each of the three regions so that one
of such members comes from each region. The director
shall likewise appoint the citizen consumer members so
that one of such members comes from each region. The
director shall serve as an ex officio member of the board
and shall serve as chairperson at meetings.

(f) The commercial whitewater advisory board shall
participate in the investigations and studies conducted
by the director. The board shall meet upon the call of
the chairperson or a majority of the members of the
board and shall meet within a reasonable time after
completion of the director's investigation and study
relative to each designated whitewater zone. At such
meetings the board shall review all data, materials and
relevant findings compiled by the director relating to
the investigation and study then under consideration
and, as soon as practicable thereafter, the board shall
promulgate rules and regulations to govern and apply
to that designated whitewater zone. Such rules and
regulations shall include, but not be limited to, the
following: (1) Minimum safety requirements for equip-
ment; (2) criteria for increasing or limiting the number
of commercial whitewater outfitters operating in
whitewater zones; (3) standards for the size and number
of rafts and numbers of persons transported in rafts;
and (4) qualifications of guides. Board members shall be
paid all reasonable and necessary expenses incurred in
the exercise of their duties.

(g) The board shall set the number of persons trans-
ported in rafts, pursuant to subdivision three, subsection
(f) of this section, at not less than the allocation in effect
on the first day of July, one thousand nine hundred
eighty-five.

(h) Upon promulgation of such rules and regulations,
the director shall immediately commence enforcement
of the rules and regulations promulgated by the board
relative to the designated whitewater zone. The promul-
gation of such rules and regulations and any revision
thereof shall be subject to the provisions of chapter
twenty-nine-a of this code.

(i) The director shall commence the first investigation
and study no later than the first day of July, one
thousand nine hundred eighty-one. All activities pursu-
ant to all investigations and studies, or as may be
required for the promulgation of rules and regulations
hereunder, shall be completed no later than the first day
of July, one thousand nine hundred eighty-eight.

(j) The commercial whitewater advisory board shall
terminate and cease to exist as an entity on the first day
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.

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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.

Regular Session, 1986

HOUSE BILLS

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## CHILD WELFARE:

Child welfare agency

**Approval**

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### Protective services
- Child abuse or neglect
  - Reporting
- Cooperation of other state agencies
- Establishment
- General powers and duties

### Interstate Adoption Assistance Compact
- Authorized
- Contents
- Definitions
- Legislative findings and purpose
- Medical assistance

### Sexual offenses against children
*See Crimes and their punishment.*

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### Apprenticeship program
- Advisory board for
- Job openings
- Posting

### CLAIMS:

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### Board of Regents
- Claims against

### Claims against certain agencies of state government
- Awarding

### Crime victims
- Awards to

### Secretary of state
- Claims against

### Tax department
- Claims against

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