ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1987
Second Extraordinary Session, 1986
FOREWORD


First Regular Session, 1987

The first regular session of the 68th Legislature convened on January 14, 1987. The constitutional sixty-day limit on the duration of the session was midnight March 14, 1987. However, the session was extended by concurrent action of the two houses (S. C. R. 38) for the purpose of consideration of specific matters enumerated within the resolution. The Legislature adjourned sine die on June 14, 1987.

Bills totaling 1,978 were introduced in the two houses during this session (1210 House and 768 Senate). The Legislature passed 164 bills, 99 House and 65 Senate. The Governor vetoed eight House bills and seven Senate bills. The Legislature overrode the veto on five of these bills (2 House and 3 Senate).

The Budget Bill was vetoed, amended and repassed, again presented to the Governor and vetoed a second time. The Legislature overrode the second veto of the bill.

H. B. 3193, flood bill, was vetoed, amended and repassed, again presented to the Governor and again vetoed by him.

Two bills were vetoed (H. B. 3155, mine safety regulations, and S. B. 226, radioactive waste compact), amended and repassed in an effort to meet the Governor's objections. Both bills were subsequently approved by him.

The net total number of bills which became law was one hundred fifty-six. The total number lost through veto was eight.

The Governor approved one hundred fifty-one bills. Five vetoed bills became law notwithstanding the objections of the Governor.

One hundred twenty-five concurrent resolutions were introduced during the session, 70 House and 55 Senate, of which 16 House and 18 Senate were adopted. Forty House Joint and 19 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted one House Joint Resolution—H. J. R. 29,
Uniform School Funding Amendment. The House had 37 House Resolutions and the Senate had 46 Senate Resolutions, of which 21 House and 42 Senate were adopted.

The Senate failed to pass 78 House bills passed by the House and 97 Senate bills failed passage by the House. Four House and six Senate bills died in conference.

Second Extraordinary Session, 1986

The Second Extraordinary Session of the 67th Legislature convened on July 18, 1986, and met until July 23. On that date, an adjournment was taken until September 7. Sine die adjournment occurred on September 9, 1986.

A total of twenty-four bills were introduced, thirteen House bills and eleven Senate bills, of which seven bills passed, five House and two Senate.

One bill, H. B. 211, credit for military service in judges' retirement system, time served as prosecuting attorney not included and payment of spouses annuities, was vetoed by the Governor.

Thirteen concurrent resolutions were offered, eight House and five Senate. Three concurrent resolutions were adopted, two House and one Senate. Thirteen joint resolutions were introduced, nine House and four Senate, two House and one Senate were adopted proposing amendments to the State Constitution: H. J. R. 1, Warehouse Freeport Tax Exemption Amendment; H. J. R. 6, County School Board Members Amendment; and S. J. R. 2, Highway and Bridge Improvement Amendment. Four House resolutions and five Senate resolutions were offered, of which three House and five Senate were adopted.

This volume will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the code of West Virginia. These acts may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston, West Virginia.

Donald L. Kopp
Clerk of the House of Delegates
and Keeper of the Rolls.
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(Only resolutions of general interest are included herein)

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1987

OFFICERS
Speaker—Robert C. Chambers, Huntington
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>First</td>
<td>Patricia Bradley (D)</td>
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<td>Sam E. Love, Jr., (D)</td>
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<td>Roy E. Givens (D)</td>
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<td>Bernard V. Kelly (D)</td>
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<td>Third</td>
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<td>Paul J. Otte (R)</td>
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<td>Bill Reger (D)</td>
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| Twenty-second | Paul R. Hutchinson, Jr. (D) | Beckley |
|               | Sterling Lewis, Jr. (D) | Daniels |
|               | Jack J. Roop (D) | Beckley |
|               | Arnold W. Ryan (D) | Martinsburg |
|               | Tom Suuman (D) | Beckley |
| Twenty-third | Bonnie Brown (D) | South Charleston |
|               | Dee Captoperton (D) | Charleston |
|               | Barbara Hatfield (D) | South Charleston |
|               | John R. Hobitzell (R) | Charleston |
|               | James F. Humphreys (D) | Charleston |
|               | Thomas A. Knight (D) | South Charleston |
|               | Charlotte J. Pritt (D) | Charleston |
|               | Lyle Sattes (D) | Charleston |
|               | Rudy Seacrist (D) | Charleston |
|               | Henry C. Shores (R) | Charleston |
|               | Sharon Spencer (D) | Charleston |
|               | John M. Wells (R) | Charleston |
| Twenty-fourth | John W. Hatcher, Jr. (D) | Fayetteville |
|               | William 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) | Summersville |
|               | C. Farrell Johnson (D) | Summersville |
| Twenty-seventh | Charles F. Jordan, Jr., (D) | Elkins |
|               | Joe Martin (D) | Elkins |
| Twenty-eighth | Donald L. Stemple (R) | Philippi |
|               | Clifford L. Summers (D) | Buckhannon |
| 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 | James L. Pitrolo, Jr. (D) | Fairmont |
|               | Paul E. Prunty (R) | Fairmont |
|               | Duane Southern (D) | Fairmont |
|               | William E. Stewart (D) | Fairmont |
| Thirty-second | Michael A. Buchanan (D) | Morgantown |
|               | Shelby (Bosley) Leary (D) | Blacksville |
|               | Twila S. Metheny (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 | Jerry L. Mezzatesta (D) | Romney |
| 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 |

(D) Democrats ........................................... 78
(R) Republicans ......................................... 22
Total .................................................. 100
MEMBERS OF THE SENATE

REGULAR SESSION, 1987

OFFICERS
President—Dan Tonkovich, Benwood
President Pro Tem—Tony Whitlow, Kellysville
Clerk—Todd C. Willis, Logan
Sergeant at Arms—Estil Bevins, Williamson
Doorkeeper—Aubrey R. Grizzell, St. Albans

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
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<tbody>
<tr>
<td>First</td>
<td>John G. Chernenko (D)</td>
<td>Wellsburg</td>
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<td>*John M. Karras (R)</td>
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<td>Thomas E. Loehr (D)</td>
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<td>*Dan R. Tonkovich (D)</td>
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<td>Donna J. Boley (R)</td>
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<td>*Mario J. Palumbo (D)</td>
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<td>Tracy W. Hylton (R)</td>
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<td>Sondra Moore Lucht (D)</td>
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(D) Democrats .................................................. 27
(R) Republicans ................................................ 7
Total ............................................................ 34

[xvi]
COMMITTEES OF THE SENATE

Regular Session, 1987

STANDING

Agriculture

Parker (Chairman), Lucht (Vice Chairman), Chafin, Fanning, Jackson, Spears, Whitacre, Whitlow and Shaw.

Banking and Insurance

Loehr (Chairman), Jones (Vice Chairman), Boettner, Brackenrich, Craigo, Kaufman, Manchin, Tomblin, Tucker, Whitacre, Williams, Karras and Shaw.

Confirmations

Whitlow (Chairman), Tomblin (Vice Chairman), Boettner, Burdette, Chafin, Jackson, Kaufman, Parker and Karras.

Education

Burdette (Chairman), Williams (Vice Chairman), Ash, Boettner, Brackenrich, Holliday, Jones, Lucht, Palumbo, Parker, Warner and Wolfe.

Energy, Industry and Mining

Sharpe (Chairman), Holmes (Vice Chairman), Brackenrich, Burdette, Chernenko, Fanning, Jackson, Loehr, Manchin, Palumbo, Tucker, Harman and Hylton.

Finance

Tomblin (Chairman), Fanning (Vice Chairman), Brackenrich, Burdette, Chernenko, Craigo, Holmes, Loehr, Manchin, Parker, Sharpe, Spears, Whitacre, Williams, Harman, Karras and Warner.

Government Organization

Spears (Chairman), Manchin (Vice Chairman), Ash, Brackenrich, Burdette, Chernenko, Craigo, Jones, Loehr, Lucht, Boley and Hylton.

[xvii]
SENATE COMMITTEES

Health and Human Resources

Ash (Chairman), Holliday (Vice Chairman), Craigo, Fanning, Jarrell, Loehr, Sharpe, Spears, Williams, Harman and Warner.

Interstate Cooperation

Holliday (Chairman), Kaufman (Vice Chairman), Chafin, Jarrell, Palumbo, Sharpe and Wolfe.

Judiciary

Tucker (Chairman), Jackson (Vice Chairman), Ash, Boettner, Chafin, Holliday, Jarrell, Jones, Kaufman, Lucht, Palumbo, Whitlow, Boley, Hylton, Shaw and Wolfe.

Labor

Holmes (Chairman), Chernenko (Vice Chairman), Fanning, Holliday, Jarrell, Jones, Kaufman, Sharpe and Boley.

Military

Jarrell (Chairman), Chernenko (Vice Chairman), Chafin, Holmes, Manchin, Palumbo, Tucker, Whitacre and Boley.

Natural Resources

Whitacre (Chairman), Brackenrich (Vice Chairman), Boettner, Chernenko, Craigo, Holmes, Palumbo, Parker, Tucker, Whitlow, Williams, Hylton and Warner.

Transportation

Craigo (Chairman), Parker (Vice Chairman), Holmes, Jackson, Lucht, Manchin, Sharpe, Tomblin and Wolfe.

Rules

Tonkovich (Chairman), Ash, Boettner, Loehr, Spears, Tomblin, Tucker, Whitlow, Harman and Shaw.
SELECT COMMITTEES

Economic Development
Boettner (Chairman), Jones, Chernenko, Holmes, Manchin, Parker, Tomblin, Whitlow, Karras and Warner.

Quality Education
Burdette (Chairman), Jones, Lucht, Williams and Harman.

JOINT COMMITTEES

Enrolled Bills
Williams (Chairman), Jarrell, Kaufman, Spears and Boley.

Government and Finance
Tonkovich (CoChairman), Boettner, Sharpe, Tomblin, Tucker, Harman and Karras.

Joint Rules
Tonkovich (CoChairman), Boettner and Harman.

Legislative Rule-Making Review
Tucker (Chairman), Boettner, Holmes, Tomblin, Harman and Hylton.
COMMITTEES OF THE
HOUSE OF DELEGATES

Regular Session, 1987

STANDING

Agriculture and Natural Resources

Hawse (Chairman of Agriculture), Bailey (Vice Chairman of Agriculture), Love (Chairman of Natural Resources), Mullett (Vice Chairman of Natural Resources), Artrip, Ashcraft, Buchanan, Burke, Childers, Hatfield, Hayden, Knight, Louisos, Mezzatesta, Murphy, Neal, Pitrolo, Reger, Shiflet, Whitt, Leggett, Overington, Prunty, Stemple and Stiles.

Banking and Insurance

Riffle (Chairman of Banking), Bradley (Vice Chairman of Banking), Garrett (Chairman of Insurance), Brown (Vice Chairman of Insurance), Berry, Crookshanks, Flanigan, Hawse, Hovouras, Jordan, McCormick, Metheney, Phillips, Pritt, Schifano, Shiflet, Southern, Susman, White, Ashley, Burk, Conley, McKinley, Nowell and Reed.

Constitutional Revision

Given (Chairman), Crookshanks (Vice Chairman), Adkins, Caperton, Fullen, Garrett, Hayden, Humphreys, Hutchinson, Kelly, Kidd, Leary, J. Martin, W. Martin, McNeely, Miller, Murensky, Pino, Sattes, Burk, Overington, Prunty, Reed, Stemple and Wells.

Education

Sattes (Chairman), Murphy (Vice Chairman), Ashcraft, Bailey, Bird, Buchanan, Caperton, Givens, Hartman, Johnson, Kidd, Lewis, Mezzatesta, Miller, Mullett, Reid, Spencer, Summers, Williams, Yanni, Conley, Otte, Overington, Prunty and Rogers.

[xx]
Finance

Farley (Chairman), Jordan (Vice Chairman), Adkins, Anderson, Artrip, Burke, Hatfield, Hawse, Houvouras, Hutchinson, Neal, Pritt, Reger, Ripple, Seacrist, Southern, Starcher, Wellman, White, Whitt, Burke, McKinley, Peddicord, Stemple and Wells.

Government Organization

McCormick (Chairman), Givens (Vice Chairman), Caperton, Childers, Flanigan, Hale, Hartman, Hayden, Kelly, Louisos, Love, J. Martin, Metheney, Murphy, Phillips, Pino, Rollins, Ryan, Stewart, Susman, Ashley, Leggett, Nowell, Shores and Stiles.

Health and Human Resources

Leary (Chairman), Hatfield (Vice Chairman), Anderson, Bird, Flanigan, Givens, Hartman, Louisos, J. Martin, Mezzatesta, Moore, Mullett, Pritt, Reger, Reid, Ripple, Roop, Spencer, Stewart, White, Ashley, Conley, R. Harman, Otte and Rogers.

Industry and Labor

Moore (Chairman), Anderson (Vice Chairman), Adkins, Berry, Brown, Ferrell, Given, Houvouras, Johnson, Lewis, Metheney, Minard, Ryan, Spencer, Stewart, Summers, Susman, Wellman, Whitt, Williams, Hoblitzell, Jones, McKinley, Nowell and Prunty.

Judiciary

Hatcher (Chairman), Humphreys (Vice Chairman), Berry, Bradley, Brown, Crookshanks, Ferrell, Fullen, Garrett, Given, Knight, Leary, W. Martin, McNeely, Minard, Moore, Pitrolo, Roop, Schifano, Faircloth, M. Harman, R. Harman, Hoblitzell, Jones and Reed.

Political Subdivisions

Seacrist (Chairman), Roop (Vice Chairman), Bailey, Bradley, Childers, Hale, Humphreys, Johnson, Jordan, Kelly, Kidd, W. Martin, Miller, Minard, Neal, Ryan, Southern, Starcher, Yanni, M. Harman, Otte, Peddicord, Rogers and Shores.
HOUSE OF DELEGATES COMMITTEES

Roads and Transportation
Yanni (Chairman), Hale (Vice Chairman), Artrip, Ashcraft, Bird, Buchanan, Burke, Ferrell, Hutchinson, Lewis, Love, McNeely, Pino, Pitrolo, Reid, Seacrest, Starcher, Summers, Williams, M. Harman, Jones, Leggett, Peddicord, Shores and Stiles.

Rules
Chambers (Chairman), Burke, Farley, Hatcher, McCormick, Murensky, Neal, Sattes, Shiflet, Swann, Faircloth and Wells.

SELECT COMMITTEES
Economic Policy
Schifano (Chairman), Phillips (Vice Chairman), Fullen, Knight, Love, J. Martin, Shiflet, Southern, Wellman, Williams, R. Harman and Hoblitzell.

Governmental Ethics
Knight (Chairman), W. Martin (Vice Chairman), Ashcraft, Brown, Crookshanks, Flanigan, Hartman, Kidd, Moore, Neal, Pritt, Faircloth, M. Harman, Otte and Reed.

JOINT COMMITTEES

Enrolled Bills
Kelly (Chairman), Ryan (Vice Chairman), Sattes, Ashley and Stiles.

Government and Finance
Chambers (CoChairman), Farley, Hatcher, Murensky, Sattes, Swann and Wells.

Joint Rules
Chambers (CoChairman), Murensky and Swann.

Legislative Rule-Making Review
Knight (Chairman), Givens, Pritt, Burk and Stiles.
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 Auditor's Office-General Administration, Account No. 1500, 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 an executive budget document, dated January 14, 1987, wherein is set forth the revenue estimates and financial statement for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document and page V thereof that there now remains unappropriated, a balance in the state fund, general revenue, of $19,616,564 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. 1500, chapter twenty-nine, 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 new and additional line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 FISCAL

4 12—Auditor’s Office—General Administration

5 Acct. No. 1500

6 6a Unclassified ............ $ — $ 8,000,000

7 The funds in the new line item to this account, above, designated “Unclassified” are being made available for expenditure in order to provide for the problems of payment of debts arising from the actual receipts of the state under its revenue laws falling short of the estimates of revenue in respect thereof and also the cash-flow problems currently resulting therefrom, with the state auditor being authorized to exercise his discretion and judgment and to prioritize payment of debts from these funds.

8 The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for current fiscal year 1986-87 by adding thereto a new line item and with such funds being available for expenditure, immediately upon passage of the bill and in such current fiscal year, to respond to the nonpayment of debts resulting from short-fall of receipts under the state’s revenue laws and the associated cash-flow problems in respect thereof; the state auditor being
26 authorized to prioritize and determine debts to be paid
27 through expenditure of these funds.

---

CHAPTER 2
(H. B. 2551—By Delegates Farley and Jordan)

[Passed February 23, 1987; 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 State Department of Education, Account No. 2860, 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 an executive budget document, dated January 14, 1987, wherein is set forth the revenue estimates and financial statement for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document and page V thereof that there now remains unappropriated, a balance in the state fund, general revenue, of $19,616,564 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. 2860, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to such account and existing line item therein, the following additional sum:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EDUCATIONAL

29—State Department of Education

Acct. No. 2860

9 Tuition Waiver....................... $ 64,285

12 Total ................................ $ 64,285

The purpose of this supplementary appropriation bill is to supplement this account and existing line item therein for expenditure in the current fiscal year 1986-87 in order to achieve reimbursement of tuition to any professional teacher renewing his or her professional certificate, or other certificates or permits toward maintaining full teaching status and completion of requirements and courses for such purpose. The funds in the above line item shall be used to pay and reimburse those persons on record with the department as being entitled to payment in connection with this departmental request, notwithstanding that such entitlement to reimbursement accrued in a prior fiscal year nor that the award of such tuition waiver by the department may have constituted expenditures in excess of appropriated amounts. These funds shall be promptly available for expenditure upon the effective date of this bill.

CHAPTER 3

(H. B. 2702—By Delegates Neal and Reger)

[Passed February 24, 1987; 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 Department of Corrections—Central
Office, Account No. 3680, 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 an executive budget document, dated January 14, 1987, wherein is set forth the revenue estimates and financial statement for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document and page V thereof that there now remains unappropriated, a balance in the state fund, general revenue, of $19,616,564 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. 3680, chapter twenty-nine, 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 CORRECTIONS

4 43—Department of Corrections—

5 Central Office

6 Acct. No. 3680

7 6 Adult Female Offenders Contract

8 Current Expenses .................. $140,000

9 The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for fiscal year 1986-87 by adding to this existing item an amount therefor to be available for expenditure in such fiscal year.
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 Department of Corrections—Correctional Units, Account No. 3770, 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 an executive budget document, dated January 14, 1987, wherein is set forth the revenue estimates and financial statement for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document and page V thereof that there now remains unappropriated, a balance in the state fund, general revenue, of $19,616,564 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. 3770, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to the existing item in such account the following sum:

1 TITLE 2. APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 CORRECTIONS
4 45—Department of Corrections—
5 Correctional Units
6 Acct. No. 3770
7 3 Current Expenses
8 Inmate Medical Expenses $218,000
The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for current fiscal year 1986-87 by adding to the existing item an amount therefor to be available for expenditure in such fiscal year and upon passage of the bill.

CHAPTER 5
(H. B. 3194—By Delegate Farley)

[Passed March 16, 1987; 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 Public Employees Insurance Board, Account No. 6150, 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 an executive budget document, dated January 14, 1987, wherein is set forth the revenue estimates and financial statement for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document and page V thereof that there now remains unappropriated, a balance in the state fund, general revenue, of $19,616,564 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. 6150, chapter twenty-nine, 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:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BOARDS AND COMMISSIONS

85—West Virginia Public Employees Insurance Board

Acct. No. 6150

3 Public Employees Health Insurance

State Contributions $ 11,000,000

Any unexpended balance remaining in the appropriation Public Employees Health Insurance State Contributions at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for fiscal year 1986-87 by adding to this existing item an amount therefor to be available for expenditure in such fiscal year and with balances at the close of such year being expendable in fiscal year 1987-88.

CHAPTER 6
(S. B. 206—Originating in the Senate Committee on Finance)

[Passed February 12, 1987; 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 state road funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the state Department of Highways, Account No. 6700, 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 dated January 14, 1987, wherein on page XII thereof is set forth the revenues and expenditures of the state road fund, including fiscal year 1986-87; 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 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 the total appropriations from the state road fund to the state Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented as follows:

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<th>Title</th>
<th>Appropriations from other funds.</th>
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<tr>
<td>88—Department of Highways</td>
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<td>(WV Code Chapters 17 and 17C)</td>
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<tr>
<td>Acct. No. 6700</td>
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<td>Other Funds</td>
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<td>Fiscal Year 1986-1987</td>
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<td>1</td>
<td>Maintenance, Expressway,</td>
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<td>2</td>
<td>Trunkline and Feeder</td>
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<td>3</td>
<td>Maintenance, State</td>
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<td>4</td>
<td>Local Services</td>
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<td>Maintenance, Contract</td>
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<td>6</td>
<td>Paving and Secondary</td>
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<td>7</td>
<td>Road Maintenance</td>
<td>34,000,000</td>
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<td>8</td>
<td>Inventory Revolving</td>
<td>1,599,000</td>
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<td>9</td>
<td>Toll Road Examination</td>
<td>500,000</td>
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<td>10</td>
<td>Equipment Revolving</td>
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<td>11</td>
<td>General Operations</td>
<td>22,821,000*</td>
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<tr>
<td>12</td>
<td>Annual Increment</td>
<td>208,000</td>
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</table>
The purpose of this supplementary appropriation bill is to supplement existing items in the aforesaid account for expenditure in the fiscal year of 1986-1987 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 7
(S. B. 744—Originating in the Senate Committee on Finance)

[Passed March 14, 1987; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal block grant moneys out of the treasury from the balance of available federal block grant moneys remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the State Health Department, Account No. 8503-A, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The chief executive has established the availability of federal block grant moneys, receivable for new programs and available for expenditure in fiscal year 1986-87, a portion of the same is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the budget bill, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred
eighty-six, be supplemented by adding to section nine thereof the account and line item thereof, as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 9. Appropriation from federal block grants.

3 143-A—State Health Department — Alcohol and Drug Abuse Treatment and Rehabilitation

4 Acct. No. 8503-A

5 TO BE PAID FROM FEDERAL FUNDS

6 1 Unclassified—Total ...................... $584,000

7 The purpose of this supplementary appropriation bill is to supplement the budget act for the current fiscal year 1986-87 by providing for a new account to be established therein to appropriate federal block grant moneys received for expenditure in the current fiscal year of 1986-87.

8 Such amount shall be available for expenditure immediately upon the effective date of the bill. Any unexpended balance remaining at the close of fiscal year 1986-87 is hereby reappropriated for expenditure in fiscal year 1987-88.

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CHAPTER 8

(H. B. 3192—By Delegates Jordan and Hawse)

[Passed March 14, 1987; 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 specified amounts and in the accounts, as specified, of the existing appropriations as of the first day of March, one thousand nine hundred eighty-seven, for the Department of Agriculture, Account No. 5100-14; for the Department of Agriculture-Soil Conservation Committee, Account No. 5120-10; and for the Depart-
ment of Human Services, Account No. 4050-77, as
appropriated by budgetary act for, or as brought
forward to, the current fiscal year ending the thirtieth
day of June, one thousand nine hundred eighty-seven.

Be it enacted by the Legislature of West Virginia:

That the specified balance amounts and in the
accounts, as specified, unexpended and unencumbered
as of the first day of March, one thousand nine hundred
eighty-seven, appropriated for, or brought forward to,
current fiscal year 1986-87, be supplemented, amended,
reduced and caused to expire into the state fund, general
revenue of this state, as follows: Account No. 5100-14,
expire the total amount of balances; Account No. 5120-
10, expire the amount of $222,189.20 or such amount so
as to leave $120,000 unexpired; and Account No. 4050-
77, expire the total amount of balances; and with such
expired amounts to be immediately available for other
and further appropriation upon the effective date of this
bill and in the current fiscal year 1986-87.

The purpose of this supplementary appropriation bill
is to supplement, amend, reduce and cause to expire into
the state fund, general revenue of the state, the amounts
as specified from existing budgetary appropriations for
fiscal year 1986-87 from the Department of Agriculture,
Account No. 5100-14 (which had an account balance of
$150,000 as of December 31, 1986) and with the total
balance, as unexpended or unencumbered, being expi-
pired; from the Department of Agriculture-Soil Conser-
vation Committee, Account No. 5120-10 (which had an
account balance of $342,189.20, as of December 31, 1986)
and with the amount of $222,189.20 being expired or
such amount as will leave $120,000 unexpired; and from
the Department of Human Services, Account No. 4050-
77 (which had an account balance of $869,594.86, as of
December 31, 1986) and with the total balance, as
unexpended or unencumbered, being expired; with all
of such expired amounts becoming immediately avail-
able for other and further appropriation upon the
effective date of the bill and in current fiscal year 1986-
87.
CHAPTER 9

(S. B. 729—Originating in the Senate Committee on Finance)

[Passed March 6, 1987; 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-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:

1 That the sum of eight 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, 1986, available for expenditure in the current fiscal year 1986-87, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, 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.

13 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 eight 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 1986-87 and upon the effective date of the bill.
CHAPTER 10
(H. B. 3191—By Delegates Jordan and Hawse)

[Passed March 13, 1987; 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 remaining balance amounts, unexpended and unencumbered as of the first day of March, one thousand nine hundred eighty-seven, from the Treasurer's Office-Disaster Recovery Fund, Account No. 8007-18, as appropriated by budgetary act for or as brought forward to the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-seven.

Be it enacted by the Legislature of West Virginia:

1. That the total remaining balance amount, unexpended and unencumbered in Account No. 8007-18 as of the first day of March, one thousand nine hundred eighty-seven, appropriated for or brought forward to and available for expenditure in current fiscal year 1986-87, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be immediately available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue of the state, the total unexpended, unencumbered and lawfully available total balances in the Treasurer's Office-Disaster Recovery Fund, account No. 8007-18, with such moneys becoming immediately available for other and further appropriation upon the effective date of the bill and in current fiscal year 1986-87.
CHAPTER 11
(S. B. 594—By Senators Tonkovich, Mr. President, by request, and Harman)

[Passed March 5, 1987; in effect from passage. Approved by the Governor.]

AN ACT to supplement, amend and transfer between items of appropriation of the West Virginia Alcohol Beverage Control Commissioner, Account No. 9270, as appropriated in 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 West Virginia Alcohol Beverage Control Commissioner, Account No. 9270, be amended to read as follows:

TITLE 2. APPROPRIATIONS.

Section 3. Appropriations from other funds.

(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>1 Personal Services</td>
<td>$9,604,230</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>5,333,672</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>225,000</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>245,000</td>
</tr>
<tr>
<td>6 Social Security Matching</td>
<td>708,225</td>
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<tr>
<td>7 Public Employees</td>
<td></td>
</tr>
<tr>
<td>8 Retirement Matching</td>
<td>940,999</td>
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<tr>
<td>9 Public Employees</td>
<td></td>
</tr>
<tr>
<td>10 Health Insurance</td>
<td>1,173,245</td>
</tr>
</tbody>
</table>

The purpose of this bill is to amend and transfer funds between items of appropriation with no increase in the total appropriation.
CHAPTER 12
(S. B. 587—By Senators Tonkovich, Mr. President, by request, and Harman)

[Passed March 5, 1987; in effect from passage. Approved by the Governor.]

AN ACT to supplement, reduce and amend Account No. 4405 (7873), 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 following lines in Account No. 4405 (7873) be amended to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 4. Appropriations of federal funds.

3 53—State Board of Education

4 Rehabilitation Division

5 (WV Code Chapter 18)

6 Acct. No. 4405

7 3 Current Expenses ...................... $6,412,230

8 5 Equipment .......................... 322,537

9 13 Disability Determination

10 14 Medical Payments .............. 6,310,902

11 The purpose of this bill is to transfer federal funds

12 between items of appropriation for better utilization of

13 funds by the Rehabilitation Division.

14 This action does not alter the total federal spending

15 authority appropriated to this division.

CHAPTER 13
(Com. Sub. for S. B. 80—By Senators Holliday and Tonkovich, Mr. President)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the attorney general prosecuting crimes committed by persons incarcerated in state institutions of corrections when requested by a prosecuting attorney and upon approval by the circuit court or a justice of the supreme court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ATTORNEY GENERAL.

§5-3-2. Act as counsel for state; duties and powers as to prosecuting attorneys; defense of national guardsmen.

The attorney general shall appear as counsel for the state in all causes pending in the supreme court of appeals, or in any federal court, in which the state is interested; he shall appear in any cause in which the state is interested that is pending in any other court in the state, on the written request of the governor, and when such appearance is entered he shall take charge of and have control of such cause; he shall defend all actions and proceedings against any state officer in his official capacity in any of the courts of this state or any of the federal courts when the state is not interested in such cause against such officer, but should the state be interested against such officer, he shall appear for the state; he shall institute and prosecute all civil actions and proceedings in favor of or for the use of the state which may be necessary in the execution of the official duties of any state officer, board or commission on the written request of such officer, board or commission; he shall, when requested by the prosecuting attorney of a county wherein a state institution of correction is located, provide attorneys for appointment as special prosecuting attorneys to assist the prosecuting attorney of said county in the prosecution of criminal proceedings when, in the opinion of the circuit judge of said county, or a justice of the West Virginia supreme court of appeals, extraordinary circumstances exist at said institution which render the financial resources of the
office of the prosecuting attorney inadequate to prose-
cute said cases; he may consult with and advise the
several prosecuting attorneys in matters relating to the
official duties of their office, and may require a written
report from them of the state and condition of the
several causes, in which the state is a party, pending in
the courts of their respective counties; he may require
the several prosecuting attorneys to perform, within the
respective counties in which they are elected, any of the
legal duties required to be performed by the attorney
general which are not inconsistent with the duties of the
prosecuting attorneys as the legal representatives of
their respective counties; when the performance of any
such duties by the prosecuting attorney conflicts with
his duties as the legal representative of his county, or
for any reason any prosecuting attorney is disqualified
from performing such duties, the attorney general may
require the prosecuting attorney of any other county to
perform such duties in any county other than that in
which such prosecuting attorney is elected and for the
performance of which duties outside of the county in
which he is elected the prosecuting attorney shall be
paid his actual traveling and other expenses out of the
appropriation for contingent expenses for the depart-
ment for which such services are rendered; the attorney
general shall keep in proper books, a register of all
causes prosecuted or defended by him in behalf of the
state or its officers and of the proceedings had in
relation thereto, and deliver the same to his successor
in office; and he shall preserve in his office all his
official opinions and publish the same in his biennial
report.

Upon request of any member of the West Virginia
national guard who has been named defendant in any
civil action arising out of that guardsman's action while
under orders from the governor relating to national
guard assistance in disasters and civil disorders, the
attorney general shall appear as counsel for and
represent such guardsman.
AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the one-year limitation on letters of credit issued by state-chartered banking institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.

§31A-4-13. Powers of state banking institutions generally.

1 Any state-chartered banking institution shall have and exercise all of the powers necessary for, or incidental to, the business of banking, and, without limiting or restricting such general powers, it shall have the right to buy or discount promissory notes and bonds, negotiate drafts, bills of exchange and other evidences of indebtedness, borrow money, receive deposits on such terms and conditions as its officers may prescribe, buy and sell exchange, bank notes, bullion or coin, loan money on personal or other security, rent safe-deposit boxes and receive on deposit, for safekeeping, jewelry, plate, stocks, bonds and personal property of whatsoever description and provide customer services incidental to the business of banking, including, but not limited to, the issuance and servicing of and lending money by means of credit cards as letters of credit or otherwise. Any state-chartered banking institution may accept, for payment at a future date, not to exceed one year, drafts drawn upon it by its customers. Any state-chartered banking institution may issue letters of credit, with a specified expiration date or for a definite term, autho-
rizing the holders thereof to draw drafts upon it or its
correspondents, at sight or on time. Any such banking
institution may organize, acquire, own, operate, dispose
of, and otherwise manage wholly owned subsidiary
corporations for purposes incident to the banking
powers and services authorized by this chapter.

Any such banking institution may acquire, own, hold,
use and dispose of, real estate, which shall in no case
be carried on its books at a value greater than the actual
cost, subject to the following limitations and for the
following purposes:

(a) Such as shall be necessary for the convenient
transaction of its business, including in any buildings,
office space or other facilities to rent as a source of
income; such investment hereafter made shall not
exceed sixty-five percent of the amount of its capital
stock and surplus, unless the consent in writing of the
commissioner of banking is first secured;

(b) Such as shall be mortgaged to it in good faith as
security for debts in its favor;

(c) Such as shall be conveyed to it in satisfaction of
debts previously contracted in the course of its business
dealings;

(d) Such as it shall purchase at sales under
judgments, decrees, trust deeds or mortgages in its
favor, or shall purchase at private sale, to secure and
effectuate the payment of debts due to it; and

(e) The value at which any real estate is held shall not
be increased by the addition thereto of taxes, insurance,
interest, ordinary repairs, or other charges which do not
materially enhance the value of the property.

Any real estate acquired by any such banking
institution under subdivisions (c) and (d) shall be
disposed of by the banking institution at the earliest
practicable date, but the officers thereof shall have a
reasonable discretion in the matter of the time to dispose
of such property in order to save the banking institution
from unnecessary losses.
In every case such property shall be disposed of within five years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the commissioner of banking.

No such banking institution shall hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by such banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.

CHAPTER 15

(S. B. 538—Originating in the Senate Committee on Banking and Insurance)

[Passed March 12, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state-chartered banking institutions; authorizing state-chartered banks to invest its funds in investments authorized for national banking associations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to officers and employees of banks and banking department; exceptions; valuation of securities.

(a) (1) The total loans and extensions of credit by a state-chartered banking institution to a person outstanding at one time and not fully secured, as determined in
a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(2) The total loans and extensions of credit by a state-chartered banking institution to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed ten percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) For the purposes of this subsection:

(A) The term "loans and extensions of credit" shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and to the extent specified by the commissioner of banking, such terms shall also include any liability of a state-chartered banking institution to advance funds to or on behalf of a person pursuant to a contractual commitment; and

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

(4) The limitations contained in this subsection shall be subject to the following exceptions:

(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse
shall not be subject to any limitation based on capital and surplus;

(B) The purchase of bankers’ acceptances of the kind described in section thirteen of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus;

(C) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the state of West Virginia or by other such obligations fully guaranteed as to principal and interest by the state of West Virginia shall not be subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the state of West Virginia or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus;

(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent
in charge of the business and property of such banking
institution or other federally insured depository institu-
tion, when such loans or extensions of credit are
approved by the commissioner of banking, shall not be
subject to any limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the
discount of negotiable or nonnegotiable installment
consumer paper which carries a full recourse endorse-
ment or unconditional guarantee by the person transfer-
ing the paper shall be subject under this section to a
maximum limitation equal to twenty-five percent of
such capital and surplus, notwithstanding the collateral
requirements set forth in subdivision (2) of this
subsection.

(ii) If the bank's files or the knowledge of its officers
of the financial condition of each maker of such
consumer paper is reasonably adequate, and an officer
of the bank designated for that purpose by the board of
directors of the bank certifies in writing that the bank
is relying primarily upon the responsibility of each
maker for payment of such loans or extensions of credit
and not upon any full or partial recourse endorsement
or guarantee by the transferor, the limitations of this
section as to the loans or extensions of credit of each
such maker shall be the sole applicable loan limitations;

(I) (i) Loans and extensions of credit secured by
shipping documents or instruments transferring or
securing title covering livestock or giving a lien on
livestock when the market value of the livestock
securing the obligation is not at any time less than one
hundred fifteen percent of the face amount of the note
covered, shall be subject under this section, notwith-
standing the collateral requirements set forth in
subdivision (2) of this subsection, to a maximum
limitation equal to twenty-five percent of such capital
and surplus.

(ii) Loans and extensions of credit which arise from
the discount by dealers in livestock of paper given in
payment for livestock, which paper carries a full
recourse endorsement or unconditional guarantee of the
seller and which are secured by the livestock being sold,
shall be subject under this section, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection, to a limitation of twenty-five percent of such capital and surplus;

(J) Loans or extensions of credit to the student loan marketing association shall not be subject to any limitation based on capital and surplus; and

(K) Loans or extensions of credit to a corporation owning the property in which that state-chartered banking institution is located, when that state-chartered banking institution has an unimpaired capital and surplus of not less than one million dollars or when approved in writing by the commissioner of banking, shall not be subject to any limitation based on capital and surplus.

(5) (A) The commissioner of banking may prescribe rules and regulations to administer and carry out the purposes of this subsection including rules or regulations to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of loans or extensions of credit;

(B) The commissioner of banking may also prescribe rules and regulations to deal with loans or extensions of credit, which were not in violation of this section prior to the effective date of this act, but which will be in violation of this section upon the effective date of this act; and

(C) The commissioner of banking also shall have authority to determine when a loan putatively made to a person shall for purposes of this subsection be attributed to another person.

(b) (1) Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by a state-chartered banking institution for its own account of any shares of stock of any corporation: Provided, That a state-chartered banking institution may purchase and sell securities and stock without recourse, solely upon the order and for the account of customers.
(2) In no event shall the total amount of investment securities of any one obligor or maker held by a state-chartered banking institution for its own account exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(3) For purposes of this subsection:

(A) The term "investment securities" shall include marketable obligations, evidencing indebtedness of any person in the form of stocks, bonds, notes and/or debentures; "investment securities" may be further defined by regulation of the commissioner of banking; and

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

(4) The limitations contained in this subsection (b) shall be subject to the following exceptions:

(A) Obligations of the United States;

(B) General obligations of any state or of any political subdivision thereof;

(C) Obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks;

(D) Obligations which are insured by the secretary of housing and urban development under Title XI of the National Housing Act (12 USC § 1749aaa et seq.);

(E) Obligations which are insured by the secretary of housing and urban development hereafter in this sentence referred to as the "secretary" pursuant to section 207 of the National Housing Act (12 USC § 1713), if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States;
(F) Obligations, participations or other instruments of
or issued by the federal national mortgage association
or the government national mortgage association, or
mortgages, obligations or other securities which are or
ever have been sold by the federal home loan mortgage
corporation pursuant to Section 305 or Section 306 of the
Federal Home Loan Mortgage Corporation Act (12 USC
§ 1454 or § 1455);

(G) Obligations of the federal financing bank;

(H) Obligations or other instruments or securities of
the student loan marketing association;

(I) Obligations of the environmental financing
authority;

(J) Such obligations of any local public agency (as
defined in Section 110(h) of the Housing Act of 1949 (42
USC § 1460 (h)) as are secured by an agreement between
the local public agency and the secretary of housing and
urban development in which the local public agency
agrees to borrow from said secretary and said secretary
agrees to lend to said local public agency, moneys in an
aggregate amount which (together with any other
moneys irrevocably committed to the payment of
interest on such obligations) will suffice to pay, when
due, the interest on and all installments (including the
final installment) of the principal of such obligations,
which moneys under the terms of said agreement are
required to be used for such payments;

(K) Obligations of a public housing agency as that
term is defined in the United States Housing Act of
1937, as amended, (42 USC Sec. 1401 et seq.) as are
secured:

(i) By an agreement between the public housing
agency and the secretary in which the public housing
agency agrees to borrow from the secretary, and the
secretary agrees to lend to the public housing agency,
prior to the maturity of such obligations, moneys in an
amount which, together with any other moneys irrevo-
cably committed to the payment of interest on such
obligations, will suffice to pay the principal of such
obligations with interest to maturity thereon, which
moneys under the terms of said agreement are required
to be used for the purpose of paying the principal of and
the interest on such obligations at their maturity;

(ii) By a pledge of annual contributions under an
annual contributions contract between such public
housing agency and the secretary if such contract shall
contain the covenant by the secretary which is autho-
rized by subsection (b) of Section 22 (Section 6 (g) (42
USC Sec. 1421a (b)) of the United States Housing Act
of 1937, as amended, and if the maximum sum and the
maximum period specified in such contract pursuant to
said subsection (b), section twenty-two, shall not be less
than the annual amount and the period for payment
which are requisite to provide for the payment when due
of all installments of principal and interest on such
obligations; or

(iii) By a pledge of both annual contributions under
an annual contributions contract containing the coven-
ant by the secretary which is authorized by Section 6
(g) of the United States Housing Act of 1937 (42 USC
Sec. 1437d (g)) and a loan under an agreement between
the local public housing agency and the secretary in
which the public housing agency agrees to borrow from
the secretary, and the secretary agrees to lend to the
public housing agency, prior to the maturity of the
obligations involved, moneys in an amount which,
together with any other moneys irrevocably committed
under the annual contributions contract to the payment
of principal and interest on such obligations will suffice
to provide for the payment when due of all installments
of principal and interest on such obligations, which
moneys under the terms of the agreement are required
to be used for the purpose of paying the principal and
interest on such obligations at their maturity; and

(L) Obligations of a corporation owning the property
in which that state-chartered banking institution is
located when that state-chartered banking institution
has an unimpaired capital and surplus of not less than
one million dollars or when approved in writing by the
commissioner of banking.
(5) Notwithstanding any other provision in this subsection, a state-chartered banking institution may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968 (42 USC Sec. 3931 et seq.) and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907 (a) or 907 (c) of that act (42 USC Sec. 3937 (a) or (c)), and may purchase shares of stock issued by any West Virginia housing corporation and may make investments in loans and commitments for loans to any such corporation: Provided, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the state-chartered banking institution exceed at any time five percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(6) Notwithstanding any other provision in this subsection, a state-chartered banking institution may purchase, for its own account, shares of stock of small business investment companies chartered under the laws of this state, which are licensed under the act of Congress known as the “Small Business Investment Act of 1958,” as amended, and of business development corporations created and organized under the act of the Legislature known as the “West Virginia Business Development Corporation Act,” as amended: Provided, That in no event shall any such state-chartered banking institution hold shares of stock in small business investment companies and/or business development corporations in any amount aggregating more than fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(7) Notwithstanding any other provision of this subsection, a state-chartered banking institution may purchase for its own account shares of stock of a bankers’ bank or a bank holding company which owns or controls such bankers’ bank, but in no event shall the total amount of such stock held by such state-chartered banking institution exceed at any time fifteen percent
of the unimpaired capital and unimpaired surplus of that state-chartered banking institution and in no event shall the purchase of such stock result in that state-chartered banking institution acquiring more than twenty percent of any class of voting securities of such bankers' bank or of the bank holding company which owns or controls such bankers' bank.

(8) Notwithstanding any other provision of this subsection, a state-chartered banking institution may invest its funds in any investment authorized for national banking associations. Such investments by state-chartered banking institutions shall be on the same terms and conditions applicable to national banking associations. The commissioner of banking may, from time to time, provide notice to state-chartered banking institutions of authorized investments under this paragraph.

(9) The commissioner of banking may prescribe rules and regulations to administer and carry out the purposes of this subsection, including rules and regulations to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of investment securities.

(c) No officer or director of any banking institution or the commissioner of banking or any employee of the department of banking shall borrow, directly or indirectly, from the banking institution with which he is connected, or which is subject to examination by the commissioner of banking, any sum of money without the prior approval of a majority of the board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee, embodied in a resolution adopted by a majority vote of such board or committee, exclusive of the director to whom the loan is made. If any officer, clerk or other employee of any bank shall own or control a majority of the stock of any other corporation, a loan to such corporation shall, for the purpose of this section, constitute a loan to such officer, clerk or other employee.
(d) Securities purchased by a banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities shall not be valued at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of a security purchased at a premium, and charging to profit and loss a sum sufficient to bring it to par at maturity.

CHAPTER 16
(H. B. 2761—By Delegates M. Harman and R. Harman)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, 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 forty-five, relating to the uniform vendors reciprocity act; preference in awarding bids in the purchase of commodities or printing.

Be it enacted by the Legislature of West Virginia:

That article three, 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 forty-five, to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-45. Reciprocal preference in letting contracts for public work.

(a) This section may be cited as the “Uniform Vendors Reciprocity Act.”

(b) Other provisions of this article notwithstanding, in any instance that a purchase of commodities or printing by the director or by a state department is required under the provisions of this article to be made upon competitive bids:
(1) Preference for the same type of work shall be given to vendors resident in the state of West Virginia over vendors resident in a state that provides for a preference in favor of vendors resident in that state over vendors resident in the state of West Virginia; and

(2) Vendors resident in the state of West Virginia are to be granted the same preference over vendors resident in another state in the same manner, on the same basis and to the same extent that preference is granted in awarding bids for the same type of work by such other state to vendors resident therein over vendors resident in the state of West Virginia.

(c) If one party to a joint venture is qualified under this section as a vendor resident in West Virginia, this qualification shall extend to all parties to the joint venture but shall not extend to subcontractors.

(d) For the purpose of this section, a vendor shall be deemed to be vendor resident in West Virginia if such vendor would qualify as a resident vendor under the provisions of section forty-four of this article.

(e) If any provision or clause of this section or application thereof to any person or circumstance is in conflict with the provisions of section forty-four of this article, such conflict shall be resolved in such a manner as to implement the provisions of this section.

**CHAPTER 17**

(H. B. 2714—By Delegates McKinley and Otte)

[Passed March 12, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the industrial development and commercial development bond act; definitions; instructional buildings and other facilities at institutions of higher education included as fundable projects.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.


Unless the context clearly indicates otherwise, as used in this article:

(a) "Commercial project" means real or personal property or both, including any buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, parking facilities, farms, parking wharfs, approaches and roadways or any number or combination of the foregoing necessary or desirable in connection with a commercial enterprise or incidental thereto and includes, without limiting the generality of the foregoing, hotels and motels and related facilities, nursing homes and other health care facilities, facilities for participatory or spectator sports, conventions or trade show facilities, airport facilities, shopping centers, office buildings, residential real property for family units, and mass commuting facilities, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education, instructional buildings and other facilities used in connection with nonpublic institutions of higher education, facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities.

(b) "County commission" means the governmental body created by section twenty-two, article VIII of the West Virginia constitution.

(c) "Governmental body" means the county commission, a town or city council or any other governing body in lieu thereof.
(d) "Industrial project" means any site, structure, building, industrial park, water dock, wharf or port facilities, fixtures, machinery, equipment and related facility, including real and personal property, or any combination thereof, suitable as a factory, mill or shop, or processing, assembly, manufacturing or fabricating project, or warehouse or distribution facility, or facilities for the extraction, production or distribution of mineral resources and related facilities, or sewage or solid waste disposal facilities, or facilities for the local furnishing of electric energy or gas, or facilities for the furnishing of water, if available on reasonable demand to members of the general public, or storage or training facilities related to any of the foregoing, or research or development facility or pollution abatement or control facility and includes the reconstruction, modernization and modification of any existing industrial project for the abatement or control of industrial pollution.

(e) "Industrial pollution" means any gaseous, liquid or solid waste substances or adverse thermal effects or combinations thereof resulting from any process of industry, manufacturing, trade or business or from the development, processing or recovery of any natural resources which pollute the land, water or air of this state.

CHAPTER 18

(H. B. 2831—By Mr. Speaker, Mr. Chambers, and Delegate Swann, by request of the Executive)

[Passed March 14, 1987; in effect January 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article two- c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance of private activity bonds and establishing an allocation and disbursements procedure for the annual state ceiling for tax-exempt private activity bonds in compliance with the provisions of section one hundred
forty-six of the United States Internal Revenue Code of one thousand nine hundred eighty-six; granting the West Virginia housing development fund a set portion of the annual state ceiling for tax-exempt private activity bonds; and providing for reservation of funds, limitations, unused allocation, expirations and carryovers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

(a) Private activity bonds (as defined in section 141(a) of the United States Internal Revenue Code of 1986, other than those described in section 146(g) of the Internal Revenue Code) issued pursuant to this article, or under article eighteen, chapter thirty-one of this code, during any calendar year shall not exceed the ceiling established by section 146(d) of the United States Internal Revenue Code.

(b) On or before the first day of each calendar year, the director of the governor's office of community and industrial development shall determine the state ceiling for such year based on the criteria of the United States Internal Revenue Code, which annual ceiling shall be allocated among the several issuers of bonds under this article or under article eighteen, chapter thirty-one of this code, as follows:

(1) Fifty million dollars shall be allocated to the West Virginia housing development fund for the purpose of issuing qualified mortgage bonds, qualified mortgage
certificates or bonds for qualified residential rental projects.

(2) One half the total state ceiling for each year remaining after the allocation to the West Virginia housing development fund described in subdivision (1) shall be allocated to the counties on a per capita basis and, unless the context in which used requires otherwise, shall be hereinafter in this section referred to as the "county allocation."

(3) One half of the total state ceiling for each year remaining after the allocation to the West Virginia housing development fund described in subsection one shall be retained by the state of West Virginia by the governor's office of community and industrial development and, unless the context in which used requires otherwise, shall be hereinafter in this section referred to as the "state allocation."

(c) The director of the governor's office of community and industrial development shall notify each clerk of the county commission of that county's apportionment from the county allocation. All apportionments made to any county from the county allocation shall be for issues of the county commission of that county and for issues of all municipalities or other governmental bodies within that county.

(d) Notwithstanding the foregoing, in the event the state allocation is fully distributed prior to the first day of July of each calendar year, the governor's office of community and industrial development may reallocate all or any portion of the then remaining county allocation to the state upon the director's notification of such action to the clerk of the several county commissions. Any reallocations of less than all of the then remaining county allocation shall be made proportionately from each county's apportionment then remaining.

(e) Distribution of both the county and state allocations to lessees, purchasers or owners of proposed commercial or industrial projects shall be on a first come, first serve basis and shall not be distributed or
allocated for any project until the governmental body seeking the same shall submit an application for reservation of funds as provided in subsection (f) of this section. The governmental body must first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the amount of bonds to be issued. Each governmental body seeking an allocation of the state ceiling following the adoption of such inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the governor's office of community and industrial development. Such notice shall include such information as may be required by the governor's office of community and industrial development by rule or regulation.

(f) Currently with or following the submission of its notice of inducement, the governmental body at any time deemed expedient by it may submit its notice of reservation of funds which shall include the following information:

(1) The date of the notice of reservation of funds;
(2) The identity of the governmental body issuing the bonds;
(3) The date of inducement and the prospective date of issuance;
(4) The name of the entity for which the bonds are to be issued;
(5) The amount of the bond issue, or, if the amount of the bond issue for which a reservation of funds has been made has been increased, the amount of the increase;
(6) The type of issue; and
(7) A description of the project for which the bonds are to be issued.

(g) (1) Upon receipt of the notice of reservation of funds by the governor's office of community and industrial development, such office shall immediately
note upon the face of such notice the date and time the same was so received and shall within ten days certify to the governmental body submitting the same (A) that the statewide ceiling has not been exceeded, if such be the case, and (B) that the amount of the bond issue has been allocated and reserved in the name of such governmental body for the project for which the bonds are to be issued and, thereafter, the amount of such bond issue shall be so allocated and reserved.

(2) In the event the amount required in the notification of reservation of funds, as provided for in subdivision (1) of this subsection, exceeds the apportionment available to that county from the county allocation, the governor's office of community and industrial development shall immediately notify the governmental body proposing to issue such bonds of that fact and such body may apply to such office for an apportionment to the extent of such excess from the state allocation.

(h) The governmental body shall submit a new notice of reservation of funds pursuant to subsections (f) and (g) above for any increase in the amount of a bond issue for which a reservation of funds has been made. Such notice shall be treated as a new request for a reservation of funds to the extent of such increase.

(i) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the certification of reservation to be made by the governor's office of community and industrial development, as required by the provisions of subsection (g) of this section, or the thirty-first day of December following such date of certification if sooner and a statement of bond closure which has been executed by the clerk, secretary, recorder or other appropriate official of the governmental body reserving the same has not been received by such office within that time, then such reservation shall expire and be deemed to have been forfeited and the funds so reserved shall be released and revert to the county and/or state allocation, as the case may be, from which the funds were originally reserved and allocation will then be
made available for other qualified issues in accordance with this section and the Internal Revenue Code:

Provided, That, as to any notice of reservation of funds received by the governor's office of community and industrial development during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to section 146(f)(5) of the Internal Revenue Code, such reservation of funds and the allocation to which the same relates shall not expire or be subject to forfeiture:

Provided, however, That any unused state ceiling as of the thirty-first day of December in any year not otherwise subject to a carry forward pursuant to section 146(f) of the Internal Revenue Code shall be allocated to the West Virginia housing development fund, which shall be deemed to have elected to carry forward the unused state ceiling for the purpose of issuing qualified mortgage bonds, qualified mortgage credit certificates or bonds for qualified residential rental projects, each as defined in the Internal Revenue Code. All requests for subsequent reservation of funds and reallocation upon loss of a reservation pursuant to this section will be treated in the same manner as a new notice of reservation of funds in accordance with subsections (f) and (g) above.

(j) Any amount of the county allocation remaining unreserved on the first day of October in any calendar year (which amount shall be determined by the director of the governor's office of community and industrial development) shall revert to the state allocation for the remainder of that year, and all notification of reservation of funds by either the state or any county submitted on or after such date shall be treated on a first come, first serve basis.

(k) The amendments to this section adopted by the Legislature at the regular session thereof, held in the year one thousand nine hundred eighty-seven, shall apply and be effective with respect to such year and to all subsequent years.
AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-three, relating to the West Virginia boundary commission act; short title; legislative findings and intent; definitions; West Virginia boundary commission created; appointment; terms in office; expenses; powers and duties.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-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 twenty-three, to read as follows:

ARTICLE 23. WEST VIRGINIA BOUNDARY COMMISSION.

§29-23-1. Definitions.

As used in this article:

(a) The term "boundary line dispute" means any property line of the state, county or a municipality that is in question as to its specific physical location.

(b) The term "West Virginia Geological and Economic Survey" means that entity established by article two, chapter twenty-nine of this code.

§29-23-2. West Virginia boundary commission created; appointment; terms in office; expenses; powers and duties.

(a) There is hereby created a boundary commission which shall consist of three members, who shall be residents and citizens of the state, all of whom shall have experience involving map reading or surveying. The commission members shall investigate state, county and
municipal boundary disputes when requested to do so by the governor or Legislature. The commission members shall be appointed by the governor, by and with the advice and consent of the Senate, no later than the first day of July, one thousand nine hundred eighty-seven. No more than two members may belong to the same political party. The commission members shall serve a term concurrent with that of the governor's term in office. Commission members may be reappointed to additional terms.

(b) Members shall be reimbursed for reasonable and necessary expenses incurred in fulfilling the duties and responsibilities of the commission.

(c) The commission shall have the authority to:

(1) Establish a boundary line which shall be presumed correct unless proven otherwise in a court of law;

(2) Employ a surveyor or professional engineer licensed in this state to survey such boundary;

(3) Contract for the placement of monuments to identify any boundary line in dispute, such monuments to be handset by a licensed surveyor;

(4) Seek the assistance of the West Virginia geological and economic survey to identify the location of any boundary line in dispute and the recommended placement of marker locations;

(5) Meet with similar commissions or bodies of any of the several states contiguous with this state, whose purpose in their respective states is to establish state boundary lines coterminous with the boundary of the state of West Virginia and submit findings and recommendations to the Legislature, applicable to the location of any particular boundary segment in question;

(6) Recommend to the Legislature that appropriate legislation be enacted, establishing the true boundary line at those portions of the state boundary that are in dispute with another state or whose location is uncertain: Provided, That the contiguous state agrees with the recommendation;
(7) Recommend to the Legislature, where no agreement can be attained with another state as to the actual location of any portion of this state's boundary line, proper legislation to direct that the attorney general proceed under the constitution of the United States with litigation to adjudicate the exact and true location of any boundary line in dispute or whose precise location is unascertainable; and

(8) Prepare an annual report to the Legislature and governor, by the first day of the legislative session, concerning commission activities, recommendations and other necessary information.

CHAPTER 20
(H. B. 3040—By Delegate Williams)

[Passed March 14, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, six, seven, eight, ten, twelve and sixteen, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia Capital Company Act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-4. Definitions.
§5E-1-6. Qualifications of West Virginia capital companies.
§5E-1-7. Minimum standards of qualified West Virginia capital companies.
§5E-1-8. Tax credits.
§5E-1-10. Application requirements.
§5E-1-12. Qualified investments.
§5E-1-16. Examination.
§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; service industry; 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 designated 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-1-6. Qualification of West Virginia capital companies.

(a) The board shall qualify West Virginia capital
companies commencing after the effective date of this article. A company seeking to be qualified 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 application must specify the level of capitalization of the company.

(b) The application shall set forth the applicant's purpose.

(c) The board may certify West Virginia capital companies in existence after the first day of July, 1986.

§5E-1-7. Minimum standards of qualified West Virginia capital companies.

The board shall qualify West Virginia capital 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.

(b) 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 qualified.

(c) 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. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), section five, article thirteen-c, chapter eleven of this code. 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.

(d) 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.

(e) 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.

§5E-1-10. Application requirements.

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 qualification 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 qualification of the capital company by the board.

§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 capital company was designated as qualified by the board;

(2) At least forty percent of its capital base within two years of the date on which the capital company was designated as qualified by the board; and

(3) At least sixty percent of its capital base within three years of the date on which the capital company was designated as qualified 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.

§5E-1-16. Examination.

(a) Annually each qualified 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.

CHAPTER 21
(S. B. 531—By Senators Tonkovich, Mr. President, by request, and Harman)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen; to amend and reenact sections seven and twenty-two, article two, chapter forty-eight-a; to amend and reenact section two, article five of said chapter forty-eight-a; to further amend said article five by adding thereto a new section, designated section three-a; and to amend article seven of said chapter forty-eight-a by adding thereto a new section, designated section twenty-nine-a, relating to the enforcement of child support obligations generally.

Be it enacted by the Legislature of West Virginia:

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

Chapter

51. Courts and Their Officers.

48A. Enforcement of Family Obligations.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-19. Assistant director of family law masters.

(a) The court shall appoint an assistant director in the administrative office of the supreme court of appeals whose sole duties shall be the supervision and direction of administrative and other matters relating to the offices of the family law masters.

(b) The assistant director shall annually prepare a proposed budget for the family law masters operations for the next fiscal year, and submit such budget to the director of the administrative office of the supreme court of appeals. Such budget shall include all sums necessary to support the activities of the family law masters throughout the state.

(c) The assistant director shall:

(1) Develop and recommend guidelines for the conduct, operations and procedures of the offices of the family law masters and the masters' employees, including, but not limited to, the following:

(A) Docket scheduling and the performance of clerical functions.

(B) Resolution of conflicts and the transfer of part or all of the responsibilities for a case from one office to another in situations considered appropriate.
23 (C) The hours of employment and location of places of employment.
24 (2) Provide training programs for the family law masters and other employees of the office to better enable them to carry out the duties described in article four, chapter forty-eight-a of this code.
29 (3) Gather and monitor relevant statistics.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article
2. West Virginia Child Advocate Office.
5. Remedies for the Enforcement of Support Obligations and Visitation.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-7. Powers and duties of the director; advisory council.

(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 conduct, 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 functions, 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 children's 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 wrongfully 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 office to another in situations considered appropriate.

(d) The commissioner of the department of human services shall appoint a nine-person advisory committee, serving without compensation except as provided in subsection (e) of this section, composed of the following:

(A) Three public members who are eligible for services with an office of the children's advocate;

(B) Three attorneys who are members of the West Virginia state bar with experience in domestic relations law, not more than two of whom may be employees of the department: Provided, That one of the attorneys appointed shall be a children's advocate selected by the children's advocates throughout the state; and

(C) Three human service professionals who provide family counseling, not more than two of whom may be employees of the department.

Of the nine members initially appointed, one public member, one attorney and one professional shall be appointed for a term of one year; one public member, one attorney and one professional shall be appointed for a term of two years; and one public member, one
attorney and one professional shall be appointed for a term of three years. After the expiration of the initial terms, appointments thereafter shall be made for terms of three years. The commissioner shall fill any vacancies resulting from death or resignation by appointment for the unexpired term. Members of the advisory council may be reappointed.

(e) The advisory committee established under subsection (d) of this section shall advise the director in the performance of his or her duties under this section. Advisory committee members shall be reimbursed for their actual expenses for mileage, meals, and, if necessary, lodging.


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. Such moneys shall not be treated by the auditor and treasurer as part of the general revenue of the state.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

§48A-5-3a. Withholding from income of amounts payable as support — location of meeting with children's advocate; venue for proceedings.

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

(a) The total of any matured, unpaid installments of child support required to be paid by an order entered
or modified by a court of competent jurisdiction, or by the order of a magistrate court of this state under the prior enactments of this code, shall stand, by operation of law, as a decretal judgment against the obligor owing such support. A child support order shall not be retroactively modified so as to cancel or alter accrued installments of support. When an obligor is in arrears in the payment of support which is required to be paid by the terms of such order, 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 and with the same effect 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-5-3a. Withholding from income of amounts payable
as support — location of meeting with
children's advocate; venue for proceedings.

(a) When, under the provisions of section three of this
article, a meeting is required between the obligor and
the children's advocate, if the obligee is a resident of this
state, such meeting shall be held with the children's
advocate in the county wherein the obligee resides. If the
obligee is a nonresident of this state, such meeting shall
be held with the children's advocate in the county
wherein the obligor resides or where the obligor's source
of income is located.

(b) When, under the provisions of section three of this
article, a hearing is required before the family law
master, such hearing shall be held in the county wherein
the meeting between the obligor and the children's
advocate was scheduled in accordance with the provi-
sions of subsection (a) of this section.

ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT
OF SUPPORT ACT.

§48A-7-29a. Effect of support order made under another
law or by court of another state.

A support order made by a court of this state pursuant
to this article does not nullify and is not nullified by a
support order made by a court of this state pursuant to
any other law or by a support order made by a court
of any other state pursuant to a substantially similar law
or any other law, regardless of priority of issuance,
unless otherwise specifically provided by the court.
Amounts paid for a particular period pursuant to any
support order made by the court of another state shall
be credited against amounts accruing or accrued for the
same period under any support order made by the court
of this state.

CHAPTER 22
(H. B. 2660—By Delegate Brown)

[Passed February 27, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter forty-nine of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated section thirteen-c, relating to development of a state plan for predisposition diagnostic evaluation of juveniles by the legislative commission on juvenile law and other state department representatives.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13c. Predisposition of juveniles.

(a) The legislative commission on juvenile law and a representative from the department of human services, department of corrections, department of health, department of education, public legal services, and the juvenile justice committee shall develop a comprehensive plan to establish a unified state system of predisposition diagnostic evaluations for juveniles to be submitted to the West Virginia Legislature no later than the first day of January, one thousand nine hundred eighty-eight.

(b) The plan shall include, but not be limited to, the following:

(1) The development of a coordinated plan for the effective and efficient use of predisposition diagnostic services for juveniles.

(2) Standards and criteria shall be established for the use of predisposition diagnostic evaluations for juveniles including, but not limited to, the following: (i) Recommendations on the use of community-based predisposition diagnostic services for juveniles; (ii) recommendations on the use of predisposition detention centers and emergency home shelters for temporary housing during predisposition diagnostic evaluations for juveniles who cannot remain at home; (iii) recommendations on the use of community mental health centers, schools, and other appropriate facilities for the administration of predispo-
sition diagnostic evaluations for juveniles; (iv) a deter-
mination of the cost per child for current predisposition
diagnostic services for juveniles; and (v) a determination
of the estimated cost per child for community based
predisposition diagnostic services for juveniles.

CHAPTER 23
(Com. Sub. for H. B. 2561—By Delegates Jordan and Farley)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fourteen of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section thirteen-a; to amend and reenact sections three,
nine, fourteen, nineteen and twenty, article two-a,
chapter fourteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend article eleven-a, chapter sixty-one of said code by
adding thereto a new section, designated section two-a,
all relating to the court of claims; claims for unjust
arrest and imprisonment or conviction and
imprisonment; compensation awards to victims of
crimes; claim investigators; compensation and expenses;
paralegals and support staff; increasing amounts
awardable for emotional distress, injury claims and
funeral expenses; creating a special economic loss claim
payment fund and authorizing payments therefrom
without prior legislative approval; required notification
of victim compensation law by prosecuting attorney
offices; and prohibiting prosecutors from representing
claimants.

Be it enacted by the Legislature of West Virginia:

That article two, chapter fourteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended by adding thereto a new section designated
section thirteen-a; that sections three, nine, fourteen, nineteen
and twenty, article two-a, chapter fourteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted; and that article eleven-a, chapter sixty-one of said code be amended by adding thereto a new section, designated section two-a, all to read as follows:

Chapter.

14. Claims Due and Against the State.
61. Crimes and Their Punishment.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

Article.

2. Claims Against the State.
2A. Compensation Awards to Victims of Crimes.

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-13a. Claims for unjust arrest and imprisonment or conviction and imprisonment.

1 (a) The Legislature finds and declares that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned and innocent persons wrongly arrested, charged with a crime or imprisoned, who have subsequently been released when another person was arrested, prosecuted and convicted of the same criminal offense have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. The Legislature intends by enactment of the provisions of this section that those innocent persons who can demonstrate by clear and convincing evidence that they were unjustly arrested and imprisoned or unjustly convicted and imprisoned be able to recover damages against the state. In light of the substantial burden of proof that must be carried by such persons, it is the intent of the Legislature that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.
(b) Any person arrested or imprisoned or convicted and subsequently imprisoned for one or more felonies or misdemeanors against the state which he did not commit may, under the conditions hereinafter provided, present a claim for damages against the state.

(c) In order to present the claim for unjust arrest or imprisonment, claimant must establish by documentary evidence that he has been arrested and imprisoned, or both arrested and imprisoned and charged by warrant, information or indictment for one or more felonies against the state and that subsequently another person was arrested or prosecuted and convicted for the same criminal offense or offenses and all charges against the claimant were dismissed.

(d) In order to present the claim for unjust arrest, imprisonment or conviction and imprisonment, claimant must establish by documentary evidence that (1) he has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and (2) he has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint; or (3) his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed; or (4) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of West Virginia; and (5) his claim is not time barred by the provisions of subdivision (h) of this section.

(e) The claim shall state facts in sufficient detail to permit the court to find that claimant is likely to succeed at trial in proving that (1) in the case of an unjust arrest or imprisonment with a warrant, information or indictment which was subsequently dismissed that another person was arrested or prosecuted and convicted for the same offense or offenses, and (2) in the case of an unjust conviction and imprisonment that he did not commit any of the acts charged in the accusatory
instrument or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state, and (3) he did not by his own conduct cause or bring about his conviction. The claim shall be verified. If the court finds after reading the claim that claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the motion of the state.

(f) In order to obtain a judgment in his favor, claimant must prove by clear and convincing evidence that:

(1) He has been arrested and imprisoned, or both arrested and imprisoned, and charged by warrant, information or indictment for one or more felonies, and that the charges were dismissed against him when another person was subsequently charged, arrested and convicted of the same felony or felonies;

(2) He has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; or

(3) (A) He has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint; or (B) his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed; or (C) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of West Virginia;

(4) He did not commit any of the acts charged in the accusatory instrument or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state; and

(5) He did not by his own conduct cause or bring about his conviction.

(g) If the court finds that the claimant is entitled to
a judgment, it shall award damages in such sum of money as the court determines will fairly and reason-
ably compensate him.

(h) Any person claiming compensation under this section based on a pardon that was granted before the effective date of this section or the dismissal of an accusatory instrument that occurred before the effective date of this section shall file his claim within two years after the effective date of this section. Any person claiming compensation under this section based on a pardon that was granted on or after the effective date of this section or the dismissal of an accusatory instrument that occurred on or after the effective date of this section shall file his claim within two years after the pardon or dismissal.

(i) Any person claiming compensation under this section based on the dismissal of a felony charge or charges against him when another person is subsequently charged, arrested and convicted of the same felony charge or charges based upon a dismissal of the felony charge or charges that occurred before the effective date of this section shall file his claim within one year after the effective date of this section.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-9. Claim investigators; compensation and expenses; paralegals and support staff.
§14-2A-14. Grounds for denial of claim or reduction of award; maximum awards; awards for emotional distress; mental anguish, etc.


1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

3 (1) A victim;

4 (2) A dependent, spouse or minor child of a deceased
victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

(3) A third person other than a collateral source who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source.

(b) “Collateral source” means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him, from any of the following sources:

(1) The offender, except any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;

(3) Social security, medicare and medicaid;

(4) State-required, temporary, nonoccupational disability insurance; other disability insurance;

(5) Workers’ compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability;

(9) That portion of the proceeds of all contracts of
insurance payable to the claimant on account of the
death of the victim which exceeds twenty-five thousand
dollars.

(c) "Criminally injurious conduct" means conduct that
occurs or is attempted in this state which by its nature
poses a substantial threat of personal injury or death,
and is punishable by fine or imprisonment or death, or
would be so punishable but for the fact that the person
engaging in the conduct lacked capacity to commit the
crime under the laws of this state. Criminally injurious
conduct does not include conduct arising out of the
ownership, maintenance or use of a motor vehicle,
except when the person engaging in the conduct
intended to cause personal injury or death, or except
when the person engaging in the conduct committed
negligent homicide, driving under the influence of
alcohol, controlled substances or drugs, or reckless
driving.

(d) "Dependent" means an individual who received
over half of his support from the victim. For the purpose
of determining whether an individual received over half
of his support from the victim, there shall be taken into
account the amount of support received from the victim
as compared to the entire amount of support which the
individual received from all sources, including support
which the individual himself supplied. The term
"support" includes, but is not limited to, food, shelter,
clothing, medical and dental care and education. The
term "dependent" includes a child of the victim born
after his death.

(e) "Economic loss" means economic detriment con-
sisting only of allowable expense, work loss and
replacement services loss. If criminally injurious
conduct causes death, economic loss includes a depend-
ent's economic loss and a dependent's replacement
services loss. Noneconomic detriment is not economic
loss; however, economic loss may be caused by pain and
suffering or physical impairment.

(f) "Allowable expense" means reasonable charges
incurred or to be incurred for reasonably needed
products, services and accommodations, including those for medical care, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.

Allowable expense includes a total charge not in excess of two thousand dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(g) “Work loss” means loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred or to be incurred by him to obtain services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed or to be performed by him, or by income he would have earned in available appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

(h) “Replacement services loss” means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(i) “Dependent’s economic loss” means loss after a victim’s death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death.

(j) “Dependent’s replacement service loss” means loss reasonably incurred or to be incurred by dependents
after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

(k) "Noneconomic detriment" means sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice.

(l) "Victim" means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct, or who such injured person has reasonable cause to believe has engaged in such criminally injurious conduct immediately prior to the attempted apprehension.

(m) "Contributory misconduct" means any conduct of the claimant, or of the victim through whom the claimant claims an award, that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct has a casual relationship to the criminally injurious conduct that is the basis of the claim.

§14-2A-9. Claim investigators; compensation and expenses; paralegals and support staff.

The court of claims is hereby authorized to hire not more than two claim investigators to be employed within the office of the clerk of the court of claims, who shall carry out the functions and duties set forth in section twelve of this article. Claim investigators shall serve at the pleasure of the court of claims and under the administrative supervision of the clerk of the court of claims. The compensation of claim investigators shall be fixed by the court, and such compensation, together with travel, clerical and other expenses of the clerk of the court of claims relating to a claim investigator carrying out his duties under this article, including the
The court of claims is hereby authorized to hire as support staff such paralegal or paralegals and secretary or secretaries to be employed within the office of the clerk of the court of claims, necessary to carry out the functions and duties of this article. Such support staff shall serve at the will and pleasure of the court of claims and under the administrative supervision of the clerk of the court of claims.

§14-2A-14. Grounds for denial of claim or reduction of award; maximum awards; awards for emotional distress; mental anguish, etc.

(a) Except as provided in subsection (b), section ten of this article, the judge or commissioner shall not approve an award of compensation to a claimant who did not file his application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he is seeking an award of compensation.

(b) An award of compensation shall not be approved if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two hour period.

(c) The judge or commissioner shall not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his accomplice. Unless a determination is made that the interests of justice require that an award be approved in a particular case, an award of compensation shall not be made to the spouse of, or to a person living in the same household with, the offender or accomplice of the offender, or to the parent, child, brother or sister of the offender or his accomplice.
(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies, or the claim investigator, may deny a claim, reduce an award of compensation, and may reconsider a claim already approved.

(e) An award of compensation shall not be approved if the injury occurred while the victim was confined in any state, county or city jail, prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing such approval, the judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the clerk of the court of claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if such reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source: Provided, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) Except in the case of death, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim shall not exceed thirty-five thousand dollars in the aggregate. Compensation payable to a victim of criminally injur-
ious conduct which causes permanent injury may include, in addition to economic loss, an amount up to fifteen thousand dollars for emotional distress and pain and suffering which are proximately caused by such conduct. Compensation payable to all claimants because of the death of the victim shall not exceed fifty thousand dollars in the aggregate, but may include, in addition to economic loss, compensation to the claimants specified in paragraph (2), subdivision (a), section three of this article, for sorrow, mental anguish and solace.


(a) As part of an order, the court, or a judge or commissioner thereof, shall determine and award reasonable attorney's fees, commensurate with services rendered, and reimbursement for reasonable and necessary expenses actually incurred, to be paid from the crime victims compensation fund to the attorney representing a claimant in a proceeding under this article. Attorney's fees and reimbursement may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees and reimbursement shall be in addition to awards of compensation, and attorney's fees and reimbursement may be awarded whether or not an award of compensation is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section. In no event may a prosecuting attorney or assistant prosecuting attorney represent any victim seeking compensation under this article.

(b) Each witness called by the court to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this code to be paid from the crime victims compensation fund.


(a) The clerk shall certify to the department of
finance and administration, on or before the twentieth
day of November of each year, a list of all claims
pursuant to this article for which the court has made
a final determination and approved an award since the
last such certificate.

(b) The governor shall include in his proposed budget
bill and revenue estimates:

(1) An estimate of the balance and receipts antici-
pated in the crime victims compensation fund,

(2) An itemized report of the approved awards
recommended by the court to the Legislature,

(3) Such recommendations to the Legislature for
appropriations from the crime victims compensation
fund as he may deem appropriate for the payment of
fees, costs and expenses incurred, due or payable at any
time from such fund, and

(4) Such recommendations to the Legislature for
appropriations for the payment of claims arising under
this article, whether accrued and determined by the
court and included in the itemization of awards
mentioned in this section or arising during the ensuing
fiscal year.

(c) The Legislature shall, by general law, provide for
the authorization to pay the itemized awards arising
under this article or so much thereof as may be deemed
appropriate or for awards arising during the ensuing
fiscal year and provide by appropriation from the crime
victims compensation fund for the payment of such
awards authorized and for the payment of fees, costs and
expenses as from time to time may be appropriate. The
clerk shall certify each authorized award and the
amount thereof and make requisition upon the crime
victims compensation fund relating thereto to the
auditor. The auditor shall issue his warrant to the
treasurer without further examination or review of the
claim except for the question of a sufficient unexpended
balance in the appropriation: Provided, That the state
treasurer shall establish within his office a special
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CLAIMS  

40 economic loss claim payment fund, with funds which are  
41 transferred from the crime victims compensation fund  
42 by an annual line item appropriation from the  
43 Legislature.

44 In any case where the court has made a final award  
45 which includes a sum for economic loss, the court shall  
46 as part of its award order that the state auditor pay that  
47 portion of the award which is for economic loss  
48 forthwith from the economic loss claim fund, notwith- 
49 standing the fact that the Legislature has not yet  
50 considered or authorized said award. Said award and  
51 order may provide that payment be made to a claimant  
52 or to a third party for economic losses of the claimant  
53 and said award and order may provide for the payment  
54 for actual economic losses which are prospective as well  
55 as those which have already been incurred.

56 The clerk of the court shall certify the economic loss  
57 award and payment order to the auditor who shall  
58 proceed as set forth herein and issue his warrant to the  
59 treasurer for payment of the economic loss award,  
60 subject to the availability of funds in the economic loss  
61 claim payment fund.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.  


fund.

1 Whenever the prosecuting attorney's office presents a  
2 case to a grand jury or proceeds in the circuit court on  
3 an information, the prosecutor or assistant prosecutor  
4 shall within thirty days following said presentment or  
5 information notify in writing each victim of the alleged  
6 offense of the existence and basic provisions of article  
7 two-a, chapter fourteen of this code. Nothing in this  
8 section shall be construed as precluding the prosecuting  
9 attorney's office from other notification to victims of  
10 crime, or as creating a cause of action for damages  
11 against any prosecuting attorney or their staff, or  
12 against the state of West Virginia or any of its political  
13 subdivisions.
AN ACT to amend article two-a, chapter fourteen 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 compensation awards to victims of crime; requiring determination of fees owing to health care service providers; and providing for direct payment to providers from awards, beginning with awards made at the regular session of the Legislature, one thousand nine hundred eighty-seven.

Be it enacted by the Legislature of West Virginia:

That article two-a, chapter fourteen 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 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


1 As part of the order, the court, or a judge or commissioner thereof, shall determine whether fees are due and owing for health care services rendered by a physician, hospital or other health care provider stemming from an injury received as defined under this article. If such fees are due and owing, the court, or a judge or commissioner thereof, shall determine the amount or amounts and shall cause such reasonable fees to be paid out of the amount awarded the crime victim under this article directly to the physician, hospital or other health care provider. The requirements of this section shall be applicable to, and any such unpaid fees shall be determined and payable from, the awards made by the Legislature at regular session, one thousand nine hundred eighty-seven, and subsequently: Provided, That when a claim is filed under this section, the court shall
determine the total damages due the crime victim, and
where the total damages exceed the maximum amount
which may be awarded under this article, the amount
paid the health care provider shall be paid in the same
proportion to which the actual award bears to the total
damages determined by the court.

CHAPTER 25
(S. B. 470—By Senators Tomblin and Holmes)

[Passed March 10, 1987; 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, department of education, and the
department of highways, 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 commodi-
ties and services rendered by certain claimants herein
and has considered claims against the state, the board
of regents, the department of education, and the
department of highways, 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) Claims against the Board of Regents:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Linda J. Tetrick ......................... $ 595.50
(2) Kathleen S. Weber ................. $ 808.50

(b) Claims against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

From Acct. No. 2860-01

(1) Mary Elizabeth Binder .............. $ 330.00

(c) Claims against the Department of Highways:

(TO BE PAID FROM STATE ROAD FUND)

(1) Appalachian Power Co................. $19,635.17

CHAPTER 26

(S. B. 509—By Senators Tomblin and Holmes)

[Passed March 14, 1987; 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 adjutant general; alcohol beverage control commissioner; attorney general; board of regents; civil service system; commission on aging; department of banking; department of corrections; department of education; department of health; department of health-office of the chief medical examiner; department of highways; department of motor vehicles; department of natural resources; department of public safety; division of vocational rehabilitation; farm management commission; governor's office of community and industrial development; human rights commission; insurance commission; nonintoxicating beer commissioner; public service commission; supreme court of appeals; and workers' compensation fund, to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the court of claims 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 in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Adjutant General:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Cabot Corporation ................. $ 4,347.92

(b) Claims against the Alcohol Beverage Control Commissioner:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Econo Lodges of America, Inc. ...... $ 113.76
(2) Morgan Sanitation $ 210.00
(3) Sadie Runyon $ 180.40

(c) Claim against the Attorney General:
(TO BE PAID FROM GENERAL REVENUE FUND)
(1) County Court Reporters, Inc. $ 173.17

(d) Claims against the Board of Regents:
(TO BE PAID FROM SPECIAL REVENUE FUND)
from Acct. No. 9280-00
(1) Randy Byers $ 1,644.00
(2) Lionel Gene Herndon $ 3,116.00
(3) Helen Kolson $ 4,920.00
(4) Marion M. McGervey $ 87.00
(5) Jessie Mae Turney $ 4,920.00
(6) Marcia K. Vaughan $ 6,001.00
from Acct. No. 8627-40
(1) Charles R. Dotson $ 145.00
from Acct. No. 8610-60
(1) Arlie Clay Forman $ 320.00
(2) Barbara B. Harris $ 2,125.00
(3) Charles W. Priest $ 1,064.00
from Acct. No. 8610-31
(1) Delbert Wayne Helmick $ 276.00
(2) Dwight Pyles $ 27.00
(3) Peter E. Wu $ 165.00
from Acct. No. 8610-34
(1) Martha H. McBee $ 347.00
from Acct. No. 8627-42
(1) The Neff Company $ 1,294.81
from Acct. No. 8627-43
(1) Ali Reza Teymouri $ 425.00
Claim against the Civil Service System:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Department of Employment Security ............ $ 412.32

Claim against the Commission on Aging:

(TO BE PAID FROM GENERAL REVENUE FUND)

from Acct. No. 4065-06

(1) Moore Business Forms, Inc. ........ $ 4,988.00

Claims against the Department of Banking:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Federal Deposit Insurance Corporation ........ $ 8,042.60

(2) David S. Mudie ....................... $ 59.60

Claims against the Department of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Brent Boggs ....................... $ 50.00

(2) Davis Memorial Hospital ............... $ 721.01

(3) Charles R. Farris .................... $ 600.00

(4) Brady Smith ....................... $ 211.22

(5) Wheeling Clinic .................... $ 1,554.50

Claims against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

from Acct. No. 2860-01

(1) Richard B. Bord, Jr. ............... $ 155.00

(2) Gateway Motel and Restaurant, Inc. ........ $ 248.40

(3) Shelley Joan Weiss .................. $ 473.00

Claims against the Department of Health:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Kenneth Brock ....................... $ 100.88

(2) C. H. James & Co. ................... $ 44.16

(3) Emma Jean Canado ................... $ 298.00

(4) Charles L. Yarbrough, M.D., Inc. .... $ 330.00
<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>83</td>
<td>The Chesapeake and Potomac Telephone Company of West Virginia</td>
<td>$437.65</td>
</tr>
<tr>
<td>84</td>
<td>Diskriter Inc.</td>
<td>$787.00</td>
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<td>85</td>
<td>Exxon Company, U.S.A.</td>
<td>$45.40</td>
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<td>86</td>
<td>Firestone Tire and Rubber Co.</td>
<td>$105.60</td>
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<td>87</td>
<td>H. L. Gamponia, d/b/a H. L. Gamponia Medical Practice, Inc.</td>
<td>$145.20</td>
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<tr>
<td>88</td>
<td>Hamilton Business Systems</td>
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<td>89</td>
<td>Health Care Collection Service, Inc.</td>
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<td>90</td>
<td>Holistic Health Center, Inc.</td>
<td>$915.00</td>
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<td>91</td>
<td>Humana Hospital Greenbrier Valley</td>
<td>$1,079.78</td>
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<td>Kathy Lewis</td>
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<td>H. Richard Marshall</td>
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<td>94</td>
<td>Picker International Inc.</td>
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<td>Pleasant Valley Hospital</td>
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<td>96</td>
<td>Richards Medical Company</td>
<td>$83.87</td>
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<td>97</td>
<td>Roane County Family Health Care, Inc.</td>
<td>$26.60</td>
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<td>Schering Corporation</td>
<td>$100.00</td>
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<td>99</td>
<td>Scott, Craythorne, Lowe, Mullen &amp; Foster, Inc.</td>
<td>$3,287.00</td>
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<td>100</td>
<td>Thomas J. Solon</td>
<td>$373.30</td>
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<td>101</td>
<td>St. Joseph’s Hospital</td>
<td>$120.00</td>
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<td>Stonewall Jackson</td>
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<td>Sturgeon’s Opticians</td>
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<td>104</td>
<td>Donald M. Thaler</td>
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<td>105</td>
<td>Union Oil Company of California, d/b/a UNOCAL</td>
<td>$93.98</td>
</tr>
<tr>
<td>106</td>
<td>West Fork River Public</td>
<td>$4,137.27</td>
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</table>

(k) **Claims against the Department of Health — Office of the Chief Medical Examiner:**

<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>118</td>
<td>Vaman S. Diwan</td>
<td>$650.00</td>
</tr>
<tr>
<td>119</td>
<td>David O. Wright</td>
<td>$250.00</td>
</tr>
</tbody>
</table>
(l) Claims against the Department of Highways:

(TO BE PAID FROM STATE ROAD FUND)

(1) Jay L. Bolyard ........................ $ 360.00
(2) Wallace M. Cogar ......................... $ 2,420.68
(3) Robert W. Davis ........................ $ 100.00
(4) Fonso W. Dotson and Sarah E. Dotson .............. $ 185.75
(5) Rettie Louise Hamon ..................... $ 181.40
(6) Dubois Jordan ............................ $ 122.11
(7) Chester Lewis ............................ $ 364.52
(8) Paula H. Meredith ....................... $ 144.00
(9) Rosemary Nicola ......................... $ 320.10
(10) Joyce Priddy ............................ $ 118.38
(11) Philip Skeen ............................. $ 322.12
(12) Raymond L. Smith ...................... $ 1,449.00
(13) Aetna Casualty & Surety, as subrogee of Robert W. Davis $ 132.94

(m) Claims against the Department of Motor Vehicles:

(TO BE PAID FROM STATE ROAD FUND)

(1) Charleston Cash Register Co. ........... $ 3,375.00
(2) Ronald L. Hunt ......................... $ 184.75
(3) John Malcolm ........................... $ 15.17

(n) Claim against the Department of Natural Resources:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Moore Business Forms, Inc. ............ $ 1,591.65

(o) Claims against the Department of Public Safety:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) David R. Gaskins ....................... $ 430.00
(2) J. H. Kim ............................... $ 74.00
(3) Radiology, Inc. ........................ $ 135.00

(p) Claims against the Division of Vocational Rehabilitation:

(TO BE PAID FROM SPECIAL REVENUE FUND)

from Acct. No. 7873-01

(1) A & I Supply Company .................... $ 14.05
(2) Alling and Cory ........................ $ 834.36
from Acct. No. 7873-02

(1) Lowe's of West Virginia, Inc. d/b/a Lowe's
Government Sales/WV ............ $ 1,002.57

from Acct. No. 7873-05

(1) St. Joseph's Hospital ............ $ 310.00

(TO BE PAID FROM GENERAL REVENUE FUND)

from Acct. No. 4405-03

(1) Vocational Research Institute....... $10,119.90

(q) Claim against the Farm Management Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bob's Mobile Home Service ........ $ 1,386.64

(r) Claim against the Governor's Office of Community and Industrial Development:

(TO BE PAID FROM GENERAL REVENUE FUND)

from Acct. No. 1210

(1) The Lawhead Press, Inc. ............ $ 351.90

(s) Claim against the Human Rights Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Olympia USA, Inc. ............... $ 6,178.00

(t) Claim against the Insurance Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Zenith Data Systems Corp. ........ $ 2,623.45

(u) Claims against the Nonintoxicating Beer Commissioner:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Advanced Brands, Ltd. ............ $ 557.38
(2) Eastern Brewing Corporation ...... $ 300.00
(3) Gourmet Beer International, Inc. .. $ 100.00
(4) Jos. Huber Brewing Co. ........... $ 1,031.25
(5) The Lion Inc. ..................... $ 750.00
(v) Claim against the Public Service Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) David L. Akers ......................... $ 70.05

(w) Claim against the Supreme Court of Appeals:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Associated Psychiatric Services, Inc. ......................... $ 500.00

(x) Claims against the Workers' Compensation Fund:

(TO BE PAID FROM WORKER'S COMPENSATION FUND)

(1) E. E. Bibb, III ......................... $ 125.00

(2) Jefferds Corporation ...................... $ 516.96

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 27

(S. B. 441—By Senators Tomblin and Holmes)

[Passed March 14, 1987; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.
Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

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:

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<tr>
<th>Claimant</th>
<th>Amount</th>
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<tr>
<td>Antill, Patricia A</td>
<td>$271.50</td>
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<td>Arritt, Jon M., II</td>
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<td>Baker, Roger Alan</td>
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<td>Ball, Timmy D</td>
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<td>Barnett, Phyllis J</td>
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<td>Bennett, Irene Lockhart</td>
<td>$3,059.60</td>
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<td>Bills, Michael</td>
<td>$1,310.00</td>
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<td>Bokanovich, Gary E</td>
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<td>Brumfield, Patricia A., as guardian of Derrick K. Brumfield</td>
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<td>Butcher, Timothy Earl</td>
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<td>Currence, Donald L., as guardian of Jared Currence</td>
<td>$13,104.00</td>
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<td>Shiflett, Thomas J. &amp; Delores A., as guardians of Jesse Armstrong</td>
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<td>Shiflett, Thomas J. &amp; Delores A., as guardians of Jennifer Armstrong</td>
<td>$18,222.75</td>
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<td>Cain, John B., Jr</td>
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<td>36</td>
<td>Casto, Brenda J.</td>
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<td>37</td>
<td>Casto, William J.</td>
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<td>Casto, William J., as guardian of Lisa M. Casto</td>
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<td>40</td>
<td>Cole, Rose</td>
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<tr>
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<td>Cote, Richard F.</td>
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<td>Cunningham, Margie L.</td>
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<td>Doherty, Lidia Meade</td>
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<td>Farr, Gerald D.</td>
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<td>Fife, Larry J.</td>
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<td>Flora, James L.</td>
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<td>Gallagher, Glenn F.</td>
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<td>Gardner, David W.</td>
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<td>Goad, Mary</td>
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<td>Gongola, Edward G., Jr.</td>
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<td>Graham, Melvin</td>
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<td>Graham, Wilma, as guardian of Roy L. Graham, II</td>
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<td>Grimm, Wendy L.</td>
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<td>Gwynn, Gary S.</td>
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<td>Hall, Gail R.</td>
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<td>Halle, Evelyn Virginia as guardian of Michael Charles Phillips</td>
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<td>Hamlin, Ruby Mae</td>
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<td>Hardway, Bernice</td>
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<td>Harless, Freddie E., II</td>
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<td>Harvey, Dayton R.</td>
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<td>Helton, Angela M.</td>
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<td>Bragg, Glen E.</td>
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<td>Hibbs, Samuel</td>
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<td>Hill, Jackie S.</td>
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<td>Jackson, Nelsie P.</td>
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<td>Jeffrey, Claude, Jr.</td>
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<td>Jenkins, Martin C.</td>
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<td>Johns, Gregory L.</td>
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<td>Jones, Rose M.</td>
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<td>Keller, Gary F.</td>
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<td>Name and Relationship</td>
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<td>Kowcheck, Hilda Mae</td>
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<td>Lamb, Johnny R.</td>
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<td>Marchman, Robert E.</td>
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<td>85</td>
<td>Marcum, Myrtle</td>
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<tr>
<td>86</td>
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<td>87</td>
<td>Marcum, Myrtle, as guardian of Shawn Marcum</td>
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<td>McKisic, Donald Larry</td>
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<td>Mitchell, Terry L.</td>
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<td>Rinnehart, Frederick D.</td>
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<td>106</td>
<td>Ring, Matthew R.</td>
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<td>107</td>
<td>Samms, Erma L.</td>
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<td>Satterfield, Harry W., Jr.</td>
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<td>Shaw, Joseph M.</td>
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<td>Sisler, Rose E.</td>
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<td>Sizemore, Melvena</td>
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<td>Skaggs, Gordon E.</td>
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<td>Slaymaker, Allen F.</td>
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<td>Smith, Robert L.</td>
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<td>115</td>
<td>Stewart, Ronda</td>
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<td>116</td>
<td>Stewart, Ronda, as guardian of Micky Stewart</td>
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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
CHAPTER 28
(Com. Sub. for S. B. 543—By Senator Tucker)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred thirty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to right to cancel contracts for future deliveries of correspondence courses, truck driver, modeling or any other occupational or business course with private proprietary schools, or multiple magazine subscriptions; return of moneys to buyer; cause of action by buyer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

*§46A-2-138. Buyer's right to cancel certain subscriptions and other obligations.

1 When a buyer has become indebted or paid cash on a contract for future deliveries of a correspondence course, on any contract entered into after the effective date of this section for truck driver, modeling or any other occupational or business course with a private proprietary school, or a multiple magazine subscriptions contract, other than for single subscriptions direct with the publisher thereof, the buyer may cancel and terminate such contract at any time by mailing a notice of cancellation by first class United States mail to the person to whom the indebtedness is owed, or with whom the contract was made, or his assignee, which notice shall forthwith terminate and cancel any financial

*Clerk's Note: This section was also amended by S. B. 762, which passed on May 28, 1987, in effect from passage.
obligation for goods or services not received by the
buyer prior to the mailing of such notice of cancellation.
The indebtedness for correspondence course materials
received and not returned shall not exceed the reasona-
ble store purchase price of such materials. In addition
thereto, in regard to a correspondence course contract
(in part or wholly by correspondence) the buyer may
cancel and terminate such indebtedness without regard
to the amount of goods and services received by mailing
such notice and by returning all materials received. The
seller shall return all moneys due the buyer within
twenty days of cancellation.

Any buyer not receiving a refund of all moneys paid
and due within twenty days of cancellation of any
contract under this section has a direct cause of action
upon any bond filed with the department of education
or board of regents to secure performance of legal
obligation pursuant to the provisions of section ten,
article two, chapter eighteen of this code.

Notwithstanding any other provision of law to the
contrary, with respect to contracts which are the subject
of or are intended to become the subject of a transaction
as provided for in this section, no seller shall:

(1) Exclude, modify or otherwise attempt to limit any
provision addressed under this section; or

(2) Exclude, modify or attempt to limit any remedy
provided by law, including the measure of damages
available under this section.

Any such exclusion, modification or attempted limita-
tion shall be void.

CHAPTER 29
(S. B. 92—By Senator Tucker)

[Passed March 11, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred four,
article three, chapter forty-six-a of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to finance charges for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; assignments of transactions made in other states; and exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

1 (1) With respect to a consumer loan, other than a consumer loan made pursuant to a revolving loan account: (a) A bank, as defined in section two, article one, chapter thirty-one-a of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section thirty, article four, chapter thirty-one-a or by the provisions of section five, section five-a, or section five-b, article six, chapter forty-seven of this code; (b) an industrial loan company, as defined in section three, article seven, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the aggregate of the interest and charges permitted by subdivisions (5) and (6), subsection (a), section eleven, article seven, chapter thirty-one of this code or by the provisions of section five, article six, chapter forty-seven of this code; (c) a building and loan association, as defined in section two, article six, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section seventeen, article six, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code; (d) a credit union, as defined in section one, article ten, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge
or interest permitted by the provisions of section sixteen, article ten, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code; and (e) any other lender, other than a supervised lender, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section five, section five-a, or section five-b, article six, chapter forty-seven of this code.

(2) As an alternative to the loan finance charge allowed by subsection (1) of this section, from the effective date of this subsection until and including the first day of July, one thousand nine hundred eighty-two, a lender, other than a supervised lender, may contract for and receive a loan finance charge not exceeding eighteen percent per annum calculated according to the actuarial method.

(3) This section does not limit or restrict the manner of calculating the loan finance charge, whether by way of add-on, discount or otherwise, so long as the rate of loan finance charge does not exceed that permitted by this section.

(4) Notwithstanding any provision of this section to the contrary, with respect to a consumer loan involving a motor vehicle or a mobile home or with respect to a consumer loan to finance the sale from one seller of both a mobile home and the real estate upon which such mobile home is or will be located, or with respect to a consumer loan where a security interest in real estate owned by the borrower is given to the lender as collateral for such loan, a lender may from the effective date of this section and until and including the first day of July, one thousand nine hundred eighty-two, contract for and receive a loan finance charge not exceeding eighteen percent per year on the unpaid balance calculated according to the actuarial method: Provided, That the quantity of real estate involved in such consumer loan transactions involving a mobile home and real estate where such finance charge is contracted for and received shall not exceed one acre.
(5) If the loan is precomputed:
(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and
(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven of this article.
(6) Notwithstanding subsection (1), the lender may contract for and receive a minimum loan finance charge of not more than five dollars when the amount loaned does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount loaned exceeds seventy-five dollars.
(7) An assignee of a consumer credit sale contract may collect, receive or enforce the sales finance charge provided in said contract, and any such charge so collected, received or enforced by an assignee shall not be deemed usurious or in violation of this chapter or any other provision of this code if such sales finance charge does not exceed the limits permitted to be charged by a seller under the provisions of this chapter.
(8) Notwithstanding subsection (7), a resident lender who is the assignee of a consumer credit sales contract executed by a resident of another state with a credit grantor in that state, may collect, receive or enforce the sales finance charge provided in said contract under the laws of the state where executed. Such charge shall not be deemed to be usurious or in violation of the provisions of this chapter or any other provisions of this code.

CHAPTER 30
(S. B. 40—By Senators Tonkovich, Mr. President and Tucker)
[Passed February 6, 1987; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section one hundred sixteen, article three, chapter forty-six-a of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, relating to change in terms of revolving charge accounts or revolving loan accounts; and when higher charges are permitted.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-116. Change in terms of revolving charge accounts or revolving loan accounts.

(1) If a creditor makes a change in the terms of a revolving charge account or revolving loan account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies provided in this chapter.

(2) A creditor may change the terms of a revolving charge account or revolving loan account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the creditor shall give to the consumer written notice of such change not less than fifteen days prior to the effective date of such change.

(3) The notice specified in subsection (2) is not required if:

(a) The consumer after otherwise receiving notice of the change agrees in writing to the change;

(b) The consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the debtor when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) The change involves no significant cost to the consumer;

(d) The consumer has previously consented in writing
to the kind of change made and notice of the change is
given to the consumer in two billing cycles prior to the
effective date of the change; or

d) The change applies only to purchases made or
obligations incurred after a date specified in a notice of
the change given in two billing cycles prior to the
effective date of the change.

(4) The notice provided for in this section is given to
the debtor when mailed to him at the address used by
the creditor for mailing periodic billing statements.

(5) Under no circumstances may a change under the
provisions of this section be made so as to increase a
sales finance charge or loan finance charge above that
permitted by the appropriate provisions on sales finance
charges or loan finance charges: Provided, That a
creditor may apply a higher permitted sales finance
charge or loan finance charge to the account balance or
debt balance unpaid as of the date the change becomes
effective.

CHAPTER 31
(H. B. 2238—By Delegate Murphy)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred eight,
article six, chapter forty-six-a of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to breach of warranty and the
abolishment of the requirement of privity generally;
requiring a manufacturer to honor a warranty where
the merchant has failed to comply with or register a
warranty; and providing for a cause of action against
a manufacturer when a merchant or repairperson has
replaced or repaired goods under warranty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-108. Breach of warranty; privity abolished.

(a) Notwithstanding any other provision of law to the contrary, no action by a consumer for breach of warranty or for negligence with respect to goods subject to a consumer transaction shall fail because of a lack of privity between the consumer and the party against whom the claim is made. An action against any person for breach of warranty or for negligence with respect to goods subject to a consumer transaction shall not of itself constitute a bar to the bringing of an action against another person.

(b) Notwithstanding any other provision of law to the contrary with respect to goods which are the subject of or intended to become the subject of a consumer transaction, no manufacturer may fail to honor a manufacturer's warranty if the consumer has complied with applicable warranty registration provisions but the merchant from whom such goods were purchased has not complied with or registered the warranty, and in such case the manufacturer shall honor the warranty.

(c) When a merchant or manufacturer has failed to honor a warranty which is valid under the laws of this state and which the manufacturer is bound to honor, if the goods have been replaced or repaired by the merchant or a repairperson, as the case may be, such merchant, repairperson or consumer, in addition to any other remedy provided by law, shall have a cause of action against the manufacturer for the reasonable cost of such replacement or repair.

CHAPTER 32

(H. B. 2363—By Mr. Speaker, Mr. Chambers)

[Passed February 11, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four and
two hundred ten, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to controlled substances; standards and schedules; and additional substances added to schedules I and IV.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

§60A-2-210. Schedule IV.

§60A-2-204. Schedule I.

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

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

3 (1) Acetylmethadol;

4 (2) Alfentanil;

5 (3) Allylprodine;

6 (4) Alphacetylmethadol;

7 (5) Alphameprodine;

8 (6) Alphamethadol;

9 (7) Alpha-methylthiofentanyl;

10 (8) Alpha-methylfentanyl;

11 (9) Benzethidine;

12 (10) Benzylfentanyl;

13 (11) Betacetylmethadol;
(12) Beta-hydroxyfentanyl;
(13) Beta-hydroxy-3-methylfentanyl;
(14) Betameprodine;
(15) Betamethadol;
(16) Betaprodine;
(17) Clonitazene;
(18) Dextromoramide;
(19) Diampromide;
(20) Diethylthiambutene;
(21) Difenoxin;
(22) Dimenoxadol;
(23) Dimepheptanol;
(24) Dimethylthiambutene;
(25) Dioxaphetylbutyrate;
(26) Dipipanone;
(27) Ethylmethylthiambutene;
(28) Etonitazene;
(29) Etoxeridine;
(30) Fenethylline;
(31) Furethidine;
(32) Hydroxypethidine;
(33) Ketobemidone;
(34) Levomoramide;
(35) Levophenacylmorphan;
(36) Morpheridine;
(37) Noracymethadol;
(38) Norlevorphanol;
(39) Normethadone;
48    (40) Norpipanone;
49    (41) Para-fluorofentanyl;
50    (42) Phenadoxone;
51    (43) Phenampromide;
52    (44) Phenomorphan;
53    (45) Phenoperidine;
54    (46) Piritramide;
55    (47) Proheptazine;
56    (48) Properidine;
57    (49) Propiram;
58    (50) Racemoramide;
59    (51) Thiofentanyl;
60    (52) 3-methyl fentanyl;
61    (53) Tilidine;
62    (54) Trimeperidine.
63    (c) Unless specifically excepted or unless listed in
64    another schedule, any of the following opium deriv-
65    atives, its salts, isomers and salts of isomers whenever the
66    existence of such salts, isomers and salts of isomers is
67    possible within the specific chemical designation:
68    (1) Acetorphine;
69    (2) Acetyldihydrocodeine;
70    (3) Benzylmorphine;
71    (4) Codeine methylbromide;
72    (5) Codeine-N-Oxide;
73    (6) Cyprenorphine;
74    (7) Desomorphine;
75    (8) Dihydromorphine;
76    (9) Drotebanol;
77    (10) Etorphine (except HCl Salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Metyldesorphine;
(14) Metyldihydromorphine;
(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-methylenedioxyamphetamine; 3,4-methylene dioxy methamphetamine;
(3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-DMA;
(4) 5-methyloxy-3, 4-methylenedioxyamphetamine;
(5) 4-methoxyamphetamine; also known by these
trade or other names: 4-methoxy-amethylphenethylamine; paramethoxyamphetamine; PMA;

(6) 3,4,5-trimethoxy amphetamine;

(7) Bufotenine; known also by these trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin; 5-hydroxy-N-dimethyltryptamine; mappine;

(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-dimethoxyamphetamine; 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 Cis or trans tetrahydrocannabinol, and their optical isomers;
- Delta 6 Cis or trans tetrahydrocannabinol, and their optical isomers;
- Delta 3, 4 Cis or trans tetrahydrocannabinil tetrahydrocannabinol, and their optical isomers;

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

(22) Ethylamine analog of phencyclidine... Some trade or other names: N-ethyl-l-phenylcyclohexylamine, (l-phenylcyclohexyl) ethylamine, N-(l-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(23) Pyrrolidine analog of phencyclidine... Some trade or other names: l-(l-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(24) N-ethylamphetamine;

(25) Parahexyl.

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

- (1) Meclorqualone;
- (2) Methaqualone.

(f) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (1) Acetyl-alphamethemylfentanyl;
(2) Alpha-methylthiofentanyl;
(3) Benzylfentanyl;
(4) Beta-hydroxyfentanyl;
(5) Beta-hydroxy-3-methylfentanyl;
(6) 3-Methylthiofentanyl;
(7) Thenylfentanyl;
(8) Thiofentanyl;
(9) 1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts and salts of isomers;
(10) 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts and salts of isomers;
(11) 3-Methylfentanyl (N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide), its optical and geometric isomers, salts and salts of isomers.

§60A-2-210. Schedule IV.

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

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

(1) Alprazolam;
(2) Barbital;
(3) Bromazepam;
(4) Camazepam;
(5) Chlordiazepoxide;
(6) Chloral hydrate;
(7) Chlordiazepoxide;
(8) Clobazam;
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<td>40</td>
<td>(31) Methohexital;</td>
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<td>41</td>
<td>(32) Methylphenobarbital (mephobarbital);</td>
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<td>(33) Midazolam;</td>
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<td>(34) Nimetazepam;</td>
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<td>(36) Nordiazepam;</td>
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(37) Oxazepam;
(38) Oxazolam;
(39) Paraldehyde;
(40) Petrichloral;
(41) Phenobarbital;
(42) Pinazepam;
(43) Prazepam;
(44) Quazepam;
(45) Temazepam;
(46) Tetrazepam;
(47) Triazolam.

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

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

(1) Diethylpropion;
(2) Mazindol;
(3) Phentermine;
(4) Pemoline (including organometallic complexes and chelates thereof);
(5) Pipradrol;
(6) SPA ((-)-1-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 -dimethylaminoo-1, 2 -diphenyl -3 -methyl -2 -propionoxybutane).

(2) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) Pentazocine.

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.

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CHAPTER 33

(H. B. 2206—By Delegates Murphy and Murensky)

[Passed March 12, 1987; 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-dd, relating to authority of county commissions to establish county wage and benefits review boards; duties and powers; membership.

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-dd, to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3dd. Authority to establish county wage and benefits review board; duties and powers; membership.
In addition to all other powers and duties now conferred by law upon county commissions, such commissions are hereby authorized to establish employee wage and benefits review boards.

If a county commission elects to create such a board, the board shall establish uniform:

(a) Employee salary scales with ranges of minimum and maximum figures for each type of position within the county. Compensation within and between each salary range shall be based on merit, commensurate with experience, education and demonstrated job performance;

(b) Job descriptions for each type of position, including assistants, deputies and employees not covered by a civil service system;

(c) Vacation policies to be consistently applied among different employees in the same type of work;

(d) Policies governing sick leave and vacation leave, including accumulation of leave from year to year;

(e) County-wide grievance policies, which shall be pursued to the fullest extent before any judicial remedy may be sought; and

(f) Other personnel practices which reflect sound, modern administrative practice.

In addition to the above duties of an employee benefits review board, the board shall establish procedures for receiving and reviewing comments and suggestions of county employees and of any citizen of the county regarding job descriptions, salary schedules and personnel policies developed for county assistants, deputies and employees not covered by a civil service system.

The employee benefits review board shall consist of the following members:

(1) One county commissioner selected by the county commission;

(2) County clerk;

(3) County sheriff;

(4) County assessor;
The county commission shall appropriate sufficient funds for the board to accomplish in a reasonable and proper manner the duties specified herein.
offices for the judge of the circuit court and judges of courts of limited jurisdiction, clerks of circuit courts, courts of limited jurisdiction and of the county commission, assessor, sheriff, prosecuting attorney, county superintendent of schools, and surveyor, and all other offices as are or may be required by law: Provided, That the courthouse, including any annex or other facility housing the courts and offices herein set out, (excepting all facilities that are on a twenty-four-hour basis), shall be open to the public Monday through Friday during the hours prescribed by the county commission by an order duly recorded in the order book of the commission. The county commission in such order may, in its discretion, provide that the courthouse, including any annex or other facility housing the courts and offices herein set out, be open on Saturday and prescribe the hours during which it shall be open. In no case may the county commission provide that the courthouse, including any annex or other facility housing the courts and offices herein set out, be open for business on Sundays or national or state holidays: Provided, however, That the county commission of every county having a population in excess of two hundred thousand may provide at the county seat or elsewhere in the county, as the county commission shall determine, a suitable jail or jails: Provided further, That the county commission of any county, regardless of population, may, as provided in article twenty-three, chapter eight of the code of West Virginia, contract with the county commissions of one or more other counties within this state for the erection, construction, equipment, leasing and renting of a regional correctional center for either adult or youth offenders, at a location mutually agreeable to the contracting parties and not necessarily at the county seat, which will serve each county entering into the contract. The county commission shall keep the courthouse, jail and other offices in constant and adequate repair, and supplied with the necessary heat, light, furniture, record books, and janitor service, and, except as to the office for the judge of the circuit court, with the necessary stationery and postage, and other things as shall be necessary; but all of the public records, books
and papers belonging or appertaining to the county
surveyor's office shall be delivered to the clerk of the
county commission and retained by him in his official
possession and under his control and shall constitute a
part of the public records, books and papers of his office.
All courthouses, jails and offices hereafter erected shall
be built of stone and brick, or stone or brick, or other
equally fireproof materials, and the offices shall be
fireproof or be furnished with fireproof vaults or safes.
The jails shall be well secured, and sufficient for the
convenient accommodation of those who may be confined
therein, and so that the convicts may be in apartments
separate from each other, and from the other prisoners;
every apartment shall be so constructed that it can be
kept comfortable. The county commission may also
provide other necessary offices and buildings, and may,
by purchase or otherwise, acquire as much land as may
be requisite or desirable for county purposes, and may
suitably enclose, improve and embellish the lands so
acquired.

Subject to the conditions hereinabove set forth with
respect to the site of the courthouse, jail, and other
offices, the commission may, from time to time, as may
seem to it proper, provide, at the expense of the county,
a new or other building or buildings to be used for the
courthouse and jail, or for either, together with suitable
offices, as aforesaid, and for that purpose may acquire,
by purchase or otherwise, and hold any lands, or lands
and buildings, which may be necessary, and may
enclose, improve and embellish the same. When any new
or other building or buildings shall be ready for
occupancy, the county commission shall make an order
declaring that, on a day to be therein named, the new
or other building or buildings shall become the court-
house, or jail, or both the courthouse and jail of the
county, and shall cause copies of the order to be posted
at the front door of the new as well as of the old
courthouse, at least twenty days before the day named
in the order; and on and after the day named the new
or other building or buildings shall become, respec-
tively, the courthouse, or jail, or both the courthouse and
jail of the county in all respects and for all purposes.
After the change shall have been made the county commission may sell or otherwise dispose of, as may seem to it proper, the building or buildings previously used as a courthouse and jail, or either, and the land on which they are, or either is, situated, and of the interest of the county therein.

CHAPTER 35
(S. B. 574—Originating in the Senate Committee on the Judiciary)

[Passed March 11, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assistant prosecuting attorneys.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-8. Assistant prosecuting attorneys; appointment and compensation; when court may appoint attorney to prosecute.

The prosecuting attorney of each county may, in accordance with and limited by the provisions of section seven of this article, appoint practicing attorneys to assist him in the discharge of his official duties during his term of office. Any attorney so appointed shall be classified as an assistant prosecuting attorney and shall take the same oath and may perform the same duties as his principal. Each assistant shall serve at the will
and pleasure of his principal and may be removed from office by the circuit court of the county in which he is appointed for any cause for which his principal might be removed.

If, in any case, the prosecuting attorney and his assistants are unable to act, or if in the opinion of the court it would be improper for him or his assistants to act, the court shall appoint some competent practicing attorney to act in that case. The court shall certify to the county commission the performance of that service when completed and recommend to the county commission a reasonable compensation for the attorney for his service, and the compensation, when allowed by the county commission, shall be paid out of the county treasury. No provision of this section shall be construed to prohibit the employment by any person of a practicing attorney to assist in the prosecution of any person or corporation charged with a crime.

The compensation to be paid to an assistant prosecuting attorney shall include compensation provided by law for any services he renders as attorney for any administrative board or officer of his county.

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CHAPTER 36

(Com. Sub. for H. B. 2823—By Mr. Speaker, Mr. Chambers, and Delegate Swann, by request of the Executive)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine, eleven and twenty-three, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article fifteen by adding thereto a new section, designated section eight-a; and to amend and reenact sections two, four and five, article eighteen-b of said chapter, all relating to confidentiality, equipment loans, borrowing of money, election of officers, short term investment of pool funds, amount of funds available, and reversion of pool funds.
Be it enacted by the Legislature of West Virginia:

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

Article.

15. West Virginia Economic Development Authority.
18B. Mortgage and Industrial Development Investment Pool.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8a. Documentary materials concerning trade secrets; commercial or financial information; or confidentiality.

Any documentary material or data made or received by the authority for the purpose of furnishing assistance to a business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of such business, 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 authority in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code: Provided, That the West Virginia economic development authority shall make publicly available the following information regarding executed loans which shall include: (1) name of debtor, (2) location(s) of the project, (3) amount of the West Virginia economic development authority loan, (4) the purpose of the loan, (5) the loan
conditions of said executed loan, and (6) the fixed assets which serve as security for the loan.


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 provisions as usually apply to loans issued under the provision of this article: Provided, That such loans shall be secured by a first lien on the equipment financed by the loan and shall be additionally secured by a deed of trust in real property and any improvements thereto, or by an unconditional letter of credit approved by the authority, or by any direct obligation of or obligation guaranteeing the payment of both principal and interest by the United States of America. 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.


The borrowing of money and the notes, bonds and security interests evidencing any such borrowing shall be authorized by resolution approved by the board, shall bear such date or dates, and shall mature at such time or times, in the case of any such bonds, as such resolution or resolutions may provide. The notes, bonds and security interests shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to
such terms or conditions of redemption as such resolution or resolutions may provide.

§31-15-23. Governing body; organization and meetings; quorum; powers.

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 vice chairman and a secretary-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-2. Establishment of state mortgage and industrial development investment pool; investment of workers' compensation funds and other funds in such pool; schedule of moneys invested; authority of state board of investments to invest funds from the pool in short-term investments; reversion of control of state board of investments.

§31-18B-4. West Virginia economic development authority to make available state mortgage and industrial development investment pool funds for investment in industrial development; amount of funds available; interest rate specified.

§31-18B-5. Reversion to state board of investments of money not used for mortgages.

§31-18B-2. Establishment of state mortgage and industrial development investment pool; investment of workers’ compensation funds and other funds in such pool; schedule of moneys invested; authority of state board of investments to invest funds from the pool in short-term investments; reversion of control of state board of investments.

(a) There is hereby created and established a “state mortgage and industrial development investment pool” into which moneys shall be paid as provided in this section. The state mortgage and industrial development investment pool shall consist of a portion of the moneys and funds entrusted to the state board of investments by the commissioner of workers’ compensation and other state agencies and organizations, which funds are invested by the state board of investments in long-term securities according to the provisions of this code: Provided, That no moneys or funds from any pension plan shall be invested in the state mortgage and industrial development investment pool.

(b) Notwithstanding any of the restrictions of section nine, article six, chapter twelve, the state board of investments shall make available from the workers’ compensation funds and other such funds which it invests, moneys for the state mortgage and industrial development investment pool. Such moneys shall be drawn from workers’ compensation funds and other
funds except pension funds currently invested by the
state board of investments and shall be made available
for investment on or before the dates established in
subsection (c) of this section: Provided, That should the
workers' compensation fund fall below three hundred
million dollars, then no further transfers provided in
this section be granted until the fund again reaches four
hundred million dollars.

(c) The state board of investments shall make avail-
able for investment in the state mortgage and industrial
development investment pool the funds identified in
subsection (a) and (b) of this section according to the
following schedule:

(1) On the effective date of this act, twenty-five
million dollars, of which twenty million dollars is to be
deposited in the pool for investment by the housing
development fund and five million dollars is to be
deposited in the pool for investment by the economic
development authority.

(2) On the first day of October, one thousand nine
hundred eighty-two, twenty-five million dollars, of
which twenty million is to be deposited in the pool for investment by the housing development fund, and five
million is to be deposited in the pool for investment by
the economic development authority.

(3) On the first day of January, one thousand nine
hundred eighty-three, twenty-five million dollars, of
which ten million dollars is to be deposited in the pool for investment by the housing development fund, and fifteen million dollars is to be deposited in the pool for
investment by the economic development authority.

(4) On the first day of April, one thousand nine
hundred eighty-three, twenty-five million dollars, all of
which is to be deposited in the pool for investment by
the economic development authority.

Investments by the housing development fund are to
be made pursuant to the provisions of section three of
this article, and by the economic development authority
pursuant to section four of this article.
(d) The state board of investment may, after committing these funds to the state mortgage and industrial development investment pool, at the discretion of the treasurer's office, invest the moneys of such pool in any short-term investments as may be deemed to be prudent and proper until such funds are invested by the housing development fund or the West Virginia economic development authority. The income from such short-term investments shall accrue to and be credited to the accounts from which such funds were drawn in proportion to the amount of funds so drawn.

(e) The funds invested in the state mortgage and industrial development pool shall be invested solely for the benefit of the accounts from which the funds are drawn in proportion to the amount so drawn. For purposes of crediting of investment returns to the proper account, the state board of investments is to consider the state mortgage and industrial development investment pool as it would any other long-term investment at a fixed rate of return.

(f) The housing development fund and the West Virginia economic development authority may release the funds from the state mortgage and industrial development investment pool to the control of the state board of investments if it determines that lower interest rates than those now prevailing require that such funds cannot be competitively invested in first mortgages on residential property or industrial development projects located in the state.

§31-18B-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 evidencing indebtedness of two million dollars or less may be secured by a letter of credit guarantee issued by a bank having an unsecured legal lending limit greater than one million dollars.

(c) The interest rate and the maturity dates of the notes, security interests or bonds held by the treasurer for the state mortgage and industrial development investment pool shall be determined by the economic development authority according to the provisions of section eleven, article fifteen, chapter thirty-one of this code: Provided, That such interest rate shall not be less than the prior four-week auction average yield for thirteen-week treasury bills and such rate shall be valid for a term of not more than three years: Provided, however, That the economic development authority may determine a variable rate of interest to be adjusted no less frequently than semiannually, and such variable interest rate shall not be less than the prior four-week auction average yield for thirteen-week treasury bills.

§31-18B-5. Reversion to state board of investments of money not used for mortgages.

Should the housing development fund or its agents fail to loan all or a portion of the funds made available pursuant to section two of this article within one year of the date those funds become a part of the state mortgage and industrial development investment pool, then that portion of the funds not invested shall revert to the exclusive control of the state board of investments and shall no longer be required to be available to the
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9 state mortgage and industrial development investment pool.

CHAPTER 37
(Com. Sub. for H. B. 2466—By Delegate Hutchinson)

[Passed March 13, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four, seven, eight, nine, eleven and twenty-eight, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to credit unions generally; eliminating the requirement that the annual meeting of credit unions be held between the first day of January and the thirty-first day of March; providing for a misdemeanor offense for the use of the words “credit union” except by corporations formed under this article and establishing a penalty therefor; empowering the commissioner of banking to authorize associations or league of credit unions to use the words “credit union” in its name; permitting credit unions to operate automated teller machines; providing for the membership of the board of directors, credit committee and supervisory committee of a credit union; requiring an annual audit by the supervisory committee; and describing the procedures whereby a credit union may merge with another credit union.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CREDIT UNIONS.

§31-10-1. Definition and purpose; who may form incorporation agreement; bylaws; charter approval; issuance and recordation; certificate of authority; form of incorporation and bylaws prescribed by commissioner of banking.

§31-10-3. Penalty for unlawful use of words “credit union”; enjoining unlawful use.
§31-10-1. Definition and purpose; who may form; incorporation agreement; bylaws; charter approval; issuance and recordation; certificate of authority; form of incorporation and bylaws prescribed by commissioner of banking.

A credit union is hereby defined as a cooperative, nonprofit association, incorporated in accordance with the provisions of this article for the purpose of creating a source of credit at a fair and reasonable rate of interest, of encouraging habits of thrift among its members and of providing the opportunity for people to use and control their money for their mutual benefit.

Any eight persons, residents of the state of West Virginia and having a common bond of occupation or association, may apply to the secretary of state for permission to organize a credit union. A credit union shall be organized in the following manner:

(a) The applicants shall execute in duplicate an incorporation agreement by the terms of which they agree to be bound. The agreement shall state:

(1) The name of the proposed credit union which shall include the words "credit union" and which shall not be the same as that of any other existing credit union;

(2) The post-office address of its principal office or place of business;

(3) The names and post-office addresses of the incorporators, and the number of shares subscribed by each;

(4) The total number of shares of stock which the credit union shall have authority to issue and the par value of each share, which par value shall not exceed ten dollars.
(b) The applicants shall then prepare and adopt bylaws for the general government of the credit union consistent with the provisions of this article and execute the same in duplicate. The bylaws shall specify:

(1) The date of the annual meeting, which shall be prior to the first day of April of each calendar year, requirements as to notice and manner of conducting such meeting;

(2) The number of directors, which shall be not less than five, all of whom must be shareholders and members of the credit union, their powers and duties; and the compensation and duties of all officers;

(3) The conditions and qualifications for membership;

(4) The number of members of the credit committee and of the supervisory committee, with their respective powers and duties;

(5) The conditions upon which shares may be issued, transferred and withdrawn;

(6) The charges, if any, to be made for failure to meet obligations punctually;

(7) The conditions upon which deposits may be received and withdrawn, and whether the credit union shall have the power to borrow;

(8) The manner in which the funds of the credit union shall be invested;

(9) The conditions upon which loans may be made and repaid;

(10) The method of receipting for money paid in on account of shares, deposits and loans;

(11) The manner in which the reserve fund shall be accumulated;

(12) The manner in which dividends shall be determined and paid out.

(c) The agreement and bylaws, both executed in duplicate, shall be forwarded to the secretary of state.
(d) The secretary of state, within thirty days after the receipt of such agreement, shall determine whether it conforms to the provisions of this article, and whether or not the organization of the credit union in question would benefit the organizers of it, and be consistent with the purposes of this article.

(e) Thereupon the secretary of state shall notify the applicants of his decision. If it is favorable, he shall issue a charter, attach the charter to the duplicate of the agreement and return the same, together with the duplicate of the bylaws to the applicants: Provided, That the secretary of state shall issue no charter to any credit union to do business in this state until such incorporation agreement and bylaws have been approved in writing by the commissioner of banking.

(f) The applicants shall thereupon file such charter in the office of the clerk of the county commission of the county in which the principal office of the credit union is to be located, and such clerk shall record such charters, the usual fees to be charged for such recordation.

(g) When any credit union authorized by this article desires to begin business, it must notify the commissioner of banking, who shall at his earliest convenience make an examination of its affairs. Having satisfied himself that all the conditions precedent have in good faith been complied with, said commissioner shall then issue to such credit union, under his hand, and official seal, a certificate of authority reciting that such examination has been made and that the credit union is authorized to commence business which certificate shall be displayed in the business place of such credit union. But the commissioner may withhold from any credit union his certificate authorizing the commencement of business whenever he has reason to suppose that the members have formed the same for any other than the legitimate objects contemplated in this article.

In order to simplify the organization of credit unions, the commissioner of banking shall cause to be prepared an approved form of incorporation agreement and form
102 of bylaws consistent with this article, which may be used
103 by credit union incorporators.

§31-10-3. Penalty for unlawful use of words “credit union”; enjoining unlawful use.

The use by any person, copartnership, association or corporation, except corporations formed under the provisions of this article, of any name or title which contains the words “credit union,” shall be a misdemeanor, punishable by a fine of not less than ten nor more than one hundred dollars for each day of the illegal use of such name, and such use may be enjoined by any court having equity jurisdiction over the party or parties. However, the commissioner of banking may authorize associations of credit unions or leagues of credit unions within the state whose members are credit unions to use a name or title which contains the words “credit union.”


A credit union shall have the following powers:

(a) To receive the savings of its members either as payment on shares, or as deposits (including the right to conduct Christmas clubs, vacation clubs and other such thrift organizations within the membership);

(b) To make loans to members for provident or productive purposes;

(c) To make loans to cooperative society or other organization having membership in the credit union;

(d) To deposit funds in state and national banks;

(e) To invest in any investment legal for savings banks;

(f) To borrow money as hereinafter indicated;

(g) To permit the owner of a share or deposit to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties if such share or deposit is one in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic,
charitable, educational or other similar purposes and
which is not operated for profit or if such deposit or
account consists of public funds deposited by an officer,
employee or agent of the United States, any state,
county, municipality or political subdivision thereof;

(h) To maintain automated teller machines at its
principal location and at locations other than its
principal office, upon the approval of the state banking
commissioner and a majority vote of the members voting
on such question. A credit union may join with one or
more other credit unions or financial institutions in the
operation of automated teller machines, upon the
approval of the state banking commissioner and a
majority vote in each credit union of the members voting
on such question. The provisions of section seven of this
article notwithstanding, members voting under the
provisions of this subsection may cast their vote in
person or by proxy.

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

The fiscal year of every such corporation shall end at
the close of business on the thirty-first day of December.
The annual meeting of the corporation shall be held on
such date as may be provided in the bylaws. Special
meetings may be held by order of the directors or of the
supervisory committee, and shall be held upon request,
in writing, of ten percent of the members. Notice of all
meetings of the corporation shall be given in the manner
prescribed in the bylaws. At all meetings of members,
a member shall have but one vote, irrespective of the
number of shares held. No shareholder may vote by
proxy, but a society, association, copartnership or
corporation, having membership in a credit union, may
be represented by one person authorized by such society,
association, copartnership or corporation to so represent
it. At any meeting the members may decide upon any
question of interest to the corporation, and overrule the
board of directors; and, by a three-fourths vote of those
present and represented, may amend the bylaws, if the
notice of the meeting shall have specified the question
to be considered.
§31-10-8. Election of directors and committees; oaths of office.

At the annual meeting the members shall elect a board of directors of not less than five members, and a supervisory committee of not less than three members. The board of directors shall appoint a credit committee consisting of an odd number, but not less than three members, or in lieu of a credit committee, one or more loan officers. However, in the discretion of the members, the board of directors as such may also be the credit committee. One member of the board of directors who is not serving as president or treasurer of the credit union may also serve on the supervisory committee. All members of committees and all directors, as well as all officers whom they may elect, shall make oath as hereinafter provided, and shall hold their several offices for such terms as may be determined by the bylaws.

The oath required of each director, officer and member of a committee shall be the oath of the individual making the same, that he will, as far as the duty devolves upon him, diligently and honestly administer the affairs of such corporation, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right on the books of the corporation of at least one share therein. Such oath shall be subscribed by the individual making it, and certified by the officer before whom it is taken, and shall immediately be transmitted to the commissioner of banking and filed and preserved in his office.

§31-10-9. Election of officers; powers and duties of board of directors; directors and committeemen not to receive compensation.

At their first meeting, and at the first meeting in each fiscal year, the board of directors shall elect from their number a president, vice president, a secretary and a treasurer. The office of secretary and treasurer may, if the bylaws so provide, be held by one person; and other officers may be elected in the discretion of the directors. The board of directors shall have the general manage-
ment of the affairs, funds and records of the corporation, and shall meet as often as may be necessary. Unless the bylaws specifically reserve all or any of these duties to the members, it shall be the special duty of the directors:

(a) To act upon all applications for membership and the expulsion of members; (b) to fix the amount of the bond which shall be required of each officer having the custody of funds, which bond shall be signed as surety by some indemnity company duly licensed to transact business in West Virginia, the amount thereof to be approved by the commissioner of banking; (c) to determine from time to time the rate of interest which shall be allowed on deposits and charged on loans; (d) to fix the maximum number of shares which may be held by, and the maximum amount which may be loaned to, any one member; (e) to declare dividends; (f) to recommend amendments to the bylaws; (g) to appoint persons to fill vacancies in the board of directors or in the credit committee until the election and qualification of their successors; (h) to have charge of the investment of the funds of the corporation; (i) to perform such other duties as the members from time to time authorize.

No member of the board of directors or of the credit or supervisory committee shall receive any compensation for his services as a member of such board or committees.

The rates, terms and conditions of any loan or line of credit made to an official, or on which an official is an endorser or guarantor, shall not be more favorable than the rates, terms or conditions for comparable loans or lines of credit extended to any other credit union member.

§31-10-11. Powers and duties of supervisory committee.

The supervisory committee shall inspect the securities, cash and accounts of the corporation and supervise the acts of the board of directors, credit committee and officers. At any time the supervisory committee, by a unanimous vote, may suspend the credit committee or any member thereof, or any member or members of the board of directors, or any officer or officers elected by
the board, and by a majority vote they may call a
meeting of the shareholders to consider any violation of
this article or of the bylaws, or any practice of the
corporation which, in the opinion of such committee, is unsafe and unauthorized. Within seven days after the
suspension of the credit committee, or any member thereof or of any director or officer, the supervisory committee shall cause notice to be given of a special meeting of the members to take action relative to such suspension. The supervisory committee shall fill vacancies in their own number until the next meeting of the members.

Annually, the supervisory committee shall make or cause to be made a thorough audit of the receipts, disbursements, income, assets and liabilities of the corporation for such fiscal year, and shall make a full report thereon to the directors. Such report shall be read at the annual meeting of the members and shall be filed and preserved with the records of the corporation.


Any credit union may, with the approval of the commissioner of banking, merge with another credit union, under the existing charter of the other credit union, pursuant to any plan agreed upon by a majority of each board of directors of each credit union joining in the merger, approved by the affirmative vote of a majority of the members of each merging credit union voting at a meeting duly called for such purpose, and consented to by any governmental agency or other organization insuring the accounts of the merging credit unions. The provisions of section seven of this article notwithstanding, a member of a credit union voting on the question of merger under the provisions of this section may cast such vote in person or by proxy. After such agreement by the directors and approval by the members of each credit union the president and secretary of each credit union shall execute, in duplicate, a certificate of merger, which shall set forth all of the following:

(a) The time and place of the meeting of the board of directors at which the plan was agreed upon;
(b) The vote in favor of adoption of the plan;
(c) A copy of the resolution or other action by which
the plan was agreed upon;
(d) The time and place of the meeting of the members
at which the plan agreed upon was approved;
(e) The vote by which the plan was approved by the
members;

Such certificates, in duplicate, and a copy of the plan
of merger agreed upon shall be forwarded to the
commissioner of banking for a review. If approved, a
copy of the certificate certified by him shall be returned
to the merging credit unions within thirty days.
If a credit union seeking merger is insolvent or in
danger of insolvency, the commissioner may approve a
merger without the consent of the membership if a
majority of the board of directors of each credit union
approves a request for a merger.

Upon any such merger so effected, all property,
property rights, and interest of the merged credit union
shall vest in the surviving credit union without deed,
endorsement or other instrument of transfer, and all
debts, obligations and liabilities of the merged credit
union shall be deemed to have been assumed by the
surviving credit union under whose charter the merger
was effected.

This section shall be construed, whenever possible, to
permit a credit union chartered under any other act to
merge with one chartered under this article, or to
permit one chartered under this article to merge with
one chartered under any other act.

CHAPTER 38
(H. B. 2424—By Delegates Hutchinson and Farley)

[Passed February 23, 1987; in effect ninety days from passage. Approved by the Governor]
thousand nine hundred thirty-one, as amended, relating to changing the reference of “rape” to “sexual assault” for purposes of defining first degree murder.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-1. First and second degree murder defined; allegations in indictment for homicide.

1 Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate and premeditated killing, or in the commission of, or attempt to commit, arson, sexual assault, robbery or burglary, is murder of the first degree. All other murder is murder of the second degree.

In an indictment for murder and manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused, but it shall be sufficient in every such indictment to charge that the defendant did feloniously, willfully, maliciously, deliberately and unlawfully slay, kill and murder the deceased.

CHAPTER 39

(Com. Sub. for S. B. 279—By Senators Whillow, Whitacre, Parker and Tucker)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating to disorderly conduct; penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-1b. Disorderly conduct; penalty.

Any person who, in a public place, shall disturb the peace of others by violent, profane, indecent or boisterous conduct or language or by the making of unreasonably loud noise that is intended to cause annoyance or alarm to another person, and who persists in such conduct after being requested to desist by a law enforcement officer acting in his lawful capacity, shall be guilty of disorderly conduct, a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars.

CHAPTER 40

(Com. Sub. for S. B. 301—By Senators Boettner and Holliday)

[Passed March 14, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to certain crimes against the peace of the state; prohibiting violations of an individual's civil rights by reason of that individual's race, color, religion, ancestry, national origin, political affiliation or sex; prohibiting the use or threat of force to interfere or attempt to interfere with such rights of another person for any such reason; prohibiting conspiracies to injure, oppress, threaten, intimidate or interfere with such rights and to further any such conspiracy by teaching others in the techniques of so doing; providing for certain exceptions; and providing for penalties for violations of said section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-21. Prohibiting violations of an individual's civil rights; penalties.

(a) All persons within the boundaries of the state of West Virginia have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation or sex.

(b) If any person does by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of the state of West Virginia or by the Constitution or laws of the United States, because of such other person's race, color, religion, ancestry, national origin, political affiliation or sex, he or she shall be guilty of a felony, and, upon conviction, shall be fined not more than five thousand dollars or imprisoned not more than ten years, or both.

(c) If any person conspires with another person or persons to willfully injure, oppress, threaten, or intimidate or interfere with any citizen because of such other person's race, color, religion, ancestry, national origin, political affiliation or sex in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of the state of West Virginia or by the Constitution or laws of the United States, and in willful furtherance thereof to assemble with one or more persons for the purpose of teaching any technique or means capable of causing property damage, bodily injury or death when such person or persons intend to employ such techniques or means to violate this section, each such person shall be guilty of a felony, and, upon conviction, shall be fined not more than five thousand dollars or imprisoned not more than ten years, or both.
(d) The fact that a person committed a felony or misdemeanor, or attempted to commit a felony, because of the victim's race, color, religion, ancestry, national origin, political affiliation or sex, shall be considered a circumstance in aggravation of any crime in imposing sentence.

(e) Nothing contained in this section makes unlawful the teaching of any technique in self-defense.

(f) Nothing in this section shall be construed so as to make it unlawful nor to prohibit nor, in any manner, to impede or to interfere with any person in conducting labor union or labor union organizing activities.

CHAPTER 41

(Com. Sub. for H. B. 2634—By Mr. Speaker, Mr. Chambers, and Delegate Swann, by request of the Executive)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring that presentence reports be prepared and made available to the department of corrections prior to committing persons to the department of corrections for diagnosis and classification.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; provision for presentence reports; penalty for escape.
Notwithstanding any other provision of law, when any person has been found guilty of, or pleads guilty to, a felony, the court may, prior to pronouncing of sentence, direct that such person be delivered into the custody of the commissioner of corrections, for the purpose of diagnosis and classification for a period not to exceed sixty days: Provided, That the court shall require that a presentence report be completed by the probation officer assigned to that person and made available to the department of corrections prior to delivery of any person to a statutorily approved diagnosis and classification unit of the department of corrections. While at the diagnosis and classification unit such person shall undergo examination, diagnosis and classification and he shall then be remanded and delivered to the custody of the sheriff of the county wherein he was found guilty or entered such plea. Within ten days following the termination of such examination, diagnosis and classification, the commissioner of corrections shall make or cause to be made a report to the court wherein the person was found guilty, or entered his plea of guilty, containing the results, findings, conclusions and recommendations of the commissioner with respect to such person.

Whenever any person is remanded into the custody of the commissioner of corrections pursuant to this section, such person shall be given credit on any sentence subsequently imposed by the court equal to the time spent in such custody.

Any person who has been delivered into the custody of the commissioner under the provisions of this section and who escapes from such custody, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for one year. The term of confinement under this section shall commence at the expiration of any sentence such person would be subject to for the offense for which such person had been found guilty or to which he had entered his plea of guilty, as the case may be.
AN ACT to amend and reenact section four, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to immunization requirements for school entrance; and providing for provisional enrollment for certain persons having one dose of each vaccine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.

Whenever a resident birth occurs, the state director of health shall promptly provide parents of the newborn child with information on immunizations mandated by this state or required for admission to a public school in this state.

All children entering school for the first time in this state shall have been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough. Any person who cannot give satisfactory proof of having been immunized previously or a certificate from a reputable physician showing that an immunization for any or all diphtheria, polio, rubeola, rubella, tetanus and whooping cough is impossible or improper or sufficient reason why any or all immunizations should not be done, shall be immunized for diphtheria, polio, rubeola, rubella, tetanus and whooping cough prior to being admitted in any of the schools in the state. No child or person shall be admitted or received in any of the schools of the state until he or she has been immunized
as hereinafter provided or produces a certificate from
a reputable physician showing that an immunization for
diphtheria, polio, rubeola, rubella, tetanus and whoop-
ing cough has been done or is impossible or improper
or other sufficient reason why such immunizations have
not been done. Any teacher having information concern-
ing any person who attempts to enter school for the first
time without having been immunized against diphthe-
ria, polio, rubeola, rubella, tetanus and whooping cough
shall report the names of all such persons to the county
health officer. It shall be the duty of the health officer
in counties having a full-time health officer to see that
such persons are immunized before entering school:
Provided, That persons enrolling from schools outside of
the state may be provisionally enrolled under minimum
criteria established by the director of the department of
health so that the person’s immunization may be
completed while missing a minimum amount of school:
Provided, however, That no person shall be allowed to
enter school without at least one dose of each required
vaccine.

In counties where there is no full-time health officer
or district health officer, the county commission or
municipal council shall appoint competent physicians to
do the immunizations and fix their compensation.
County health departments shall furnish the biologicals
for this immunization free of charge.

Health officers and physicians who shall do this
immunization work shall give to all persons and
children a certificate free of charge showing that they
have been immunized against diphtheria, polio, rubeola,
rubella, tetanus and whooping cough, or he or she may
give the certificate to any person or child whom he or
she knows to have been immunized against diphtheria,
polio, rubeola, rubella, tetanus and whooping cough. If
any physician shall give any person a false certificate
of immunization against diphtheria, polio, rubeola,
rubella, tetanus and whooping cough, he or she shall be
guilty of a misdemeanor, and, upon conviction, shall be
fined not less than twenty-five nor more than one
hundred dollars.
Any parent or guardian who refuses to permit his or her child to be immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough, who cannot give satisfactory proof that the child or person has been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough previously, or a certificate from a reputable physician showing that immunization for any or all is impossible or improper, or sufficient reason why any or all immunizations should not be done, shall be guilty of a misdemeanor, and except as herein otherwise provided, shall, upon conviction, be punished by a fine of not less than ten nor more than fifty dollars for each offense.

CHAPTER 43
(Com. Sub. for H. B. 2212—By Delegate Hatcher)
[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to grounds for the removal of county school superintendents; and providing for the suspension of county school superintendents with or without pay prior to such removal.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.
§18-4-3. Removal and suspension.

The board may remove the superintendent from office for official misconduct, insubordination, incompetence, neglect of duty, or immorality. The charges shall be stated in writing, and the superintendent shall be given an opportunity to be heard by the board upon not less than ten days' notice. The superintendent may be
suspended by the board, with or without pay, pending final disposition of such charges.

CHAPTER 44

(Com. Sub. for H. B. 2960—By Mr. Speaker, Mr. Chambers)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of county boards of education; permitting certain vehicles to be driven by certified professional employees under state board rule; and providing limitations thereto.

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 to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.


The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

(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;
(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;

(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
school buses owned by the board of education shall be
driven or operated only by drivers regularly employed
by the board of education: Provided further, That the
county board may provide, under rules established by
the state board, for the certification of professional
employees as drivers of board-owned vehicles with a
seating capacity of less than ten passengers used for the
transportation of pupils for school-sponsored activities
other than transporting students between school and
home: And provided further, That the use of such
vehicles shall be limited to one for each school-sponsored
activity: And 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 subdi-
visions (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 childrens 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 funds” 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 45
(Com. Sub. for H. B. 2781—By Delegates Spencer and Caperton)
[Passed March 14, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory school attendance and home instruction exemption; requiring county boards to furnish written justification for request denials; providing an additional home instruction exemption; mandating certain qualifications and requirements of persons providing such instruction and performance levels of students so instructed; allowing the denial of home instruction by court order upon certain clear and convincing evidence; prohibiting such instruction upon failure to meet performance levels; requiring the county superintendent to provide available assistance; and permitting a child receiving home instruction to attend public school classes subject to certain conditions.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, 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 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

1. Compulsory school attendance shall begin with the seventh birthday and continue to the sixteenth birthday.
Exemption from the foregoing requirements of compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such cause or condition being subject to confirmation by the attendance authority of the county:

Exemption A. Instruction in a private, parochial or other approved school. — Such instruction shall be in a school approved by the county board of education and for a time equal to the school term of the county for the year. In all such schools it shall be the duty of the principal or other person in control, upon the request of the county superintendent of schools, to furnish to the county board of education such information and records as may be required with respect to attendance, instruction and progress of pupils enrolled between the ages of seven and sixteen years;

Exemption B. Instruction in home or other approved place.

(a) Such instruction shall be in the home of such child or children or at some other place approved by the county board of education and for a time equal to the school term of the county. If such request for home instruction is denied by the county board of education, good and reasonable justification for such denial must be furnished in writing to the applicant by the county board of education. The instruction in such cases shall be conducted by a person or persons who, in the judgment of the county superintendent and county board of education, are qualified to give instruction in subjects required to be taught in the free elementary schools of the state. It shall be the duty of the person or persons providing the instruction, upon request of the county superintendent, to furnish to the county board of education such information and records as may be required from time to time with respect to attendance, instruction and progress of pupils enrolled between the ages of seven and sixteen years receiving such instruction.

(b) Notwithstanding the provisions of subsection (a) of this Exemption B, the person or persons providing home
instruction meet the requirements for Exemption B when the conditions of this subsection are met: Provided, That the county superintendent shall have the right to seek from the circuit court of the county an order denying the home instruction, which order may be granted upon a showing of clear and convincing evidence that the child will suffer educational neglect or that there are other compelling reasons to deny home instruction.

(1) The person or persons providing home instruction present to the county superintendent or county board of education a notice of intent to provide home instruction and the name and address of any child of compulsory school age to be instructed: Provided, That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given at least two weeks prior to withdrawing such child from public school;

(2) The person or persons providing home instruction submit satisfactory evidence of (i) a high school diploma or equivalent and (ii) formal education at least four years higher than the most academically advanced child for whom the instruction will be provided or achievement of a score on the National Teachers Examination sufficient for teacher certification in this state;

(3) The person or persons providing home instruction outline a plan of instruction for the ensuing school year; and

(4) The child receiving home instruction annually takes a standardized test, to be administered at a public school in the county where the child resides, or administered by a licensed psychologist or other person authorized by the publisher of the test, or administered by a person authorized by the county superintendent or county board of education. In no event may the child's parent or legal guardian administer the test. Where a test is administered outside of a public school, the child's parent or legal guardian shall pay the cost of administering the test. The public school or other qualified person shall administer to children of compulsory school age the Comprehensive Test of Basic Skills, the Califor-
nia achievement test or the Stanford achievement test, which test will be selected by the public school, or other person administering the test, in the subjects of English, grammar, reading, social studies, science and mathematics; and shall be administered under standardized conditions as set forth by the published instructions of the selected test. Each child's testing results shall be made available to the person or persons providing home instruction, the child's parent or legal guardian and the county superintendent. Upon request of a duly authorized representative of the West Virginia department of education, each child's test results shall be furnished by the person or persons providing home instruction, or by the child's parent or legal guardian, to the state superintendent of schools.

If the child's composite test results for any single year for English, grammar, reading, social studies, science and mathematics fall below the fortieth percentile on the selected tests, the person or persons providing home instruction shall initiate a remedial program to foster achievement above that level. If, after one calendar year, the child's composite test results are not above the fortieth percentile level, home instruction shall no longer satisfy the compulsory school attendance requirement.

The superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, as may assist the person or persons providing home instruction subject to their availability. Any child receiving home instruction may, upon approval of the county board of education, exercise the option to attend any class offered by the county board of education as the person or persons providing home instruction may deem appropriate subject to normal registration and attendance requirements;

Exemption C. Physical or mental incapacity. — Physical or mental incapacity shall consist of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse
shall be required under the provisions of this article: 

Provided, That in all cases incapacity shall be narrowly defined and in no case shall the provisions of this article allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education;

Exemption D. Residence more than two miles from school or school bus route. — The distance of residence from a school, or school bus route providing free transportation, shall be reckoned by the shortest practicable road or path, which contemplates travel through fields by right of permission from the landholders or their agents. It shall be the duty of the county board of education, subject to written consent of landholders, or their agents, to provide and maintain safe foot bridges across streams off the public highways where such are required for the safety and welfare of pupils whose mode of travel from home to school or to school bus route must necessarily be other than along the public highway in order for said road or path to be not over two miles from home to school or to school bus providing free transportation;

Exemption E. Hazardous conditions. — Conditions rendering school attendance impossible or hazardous to the life, health or safety of the child;

Exemption F. High school graduation. — Such exemption shall consist of regular graduation from a standard senior high school;

Exemption G. Granting work permits. — The county superintendent may, after due investigation, grant work permits to youths under sixteen years of age, subject to state and federal labor laws and regulations: Provided, That a work permit may not be granted on behalf of any youth who has not completed the eighth grade of school;

Exemption H. Serious illness or death in the immediate family of the pupil. — It is expected that the county attendance director will ascertain the facts in all cases of such absences about which information is inadequate and report same to the county superintendent of schools;
Exemption I. Destitution in the home. — Exemption based on a condition of extreme destitution in the home may be granted only upon the written recommendation of the county attendance director to the county superintendent following careful investigation of the case. A copy of the report confirming such condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable effort that may properly be taken on the part of both school and public assistance authorities for the relief of home conditions officially recognized as being so destitute as to deprive children of the privilege of school attendance. Exemption for this cause shall not be allowed when such destitution is relieved through public or private means;

Exemption J. Church ordinances; observances of regular church ordinances. — The county board of education may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children: Provided, That such exemption shall be subject to the rules and regulations prescribed by the county superintendent and approved by the county board of education;

Exemption K. Alternative private, parochial, church or religious school instruction. — In lieu of the provisions of Exemption A hereinabove, exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order, or other nonpublic school which elects to comply with the provisions of article twenty-eight, chapter eighteen of the code of West Virginia.

The completion of the eighth grade shall not exempt any child under sixteen years of age from the compulsory attendance provision of this article: Provided, That there is a public high school or other public school of advanced grades or a school bus providing free transportation to any such school, the route of which is within two miles of the child’s home by the shortest practicable route or path as hereinbefore specified under Exemption D of this section.
AN ACT to amend and reenact section six, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county board of education depositories; providing alternatives to bonding as a means of securing funds of a county board of education for a bank selected as a county board of education depository.

Be it enacted by the Legislature of West Virginia:

That section six, article nine, 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 9. SCHOOL FINANCES.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

1 The sheriff of each county shall remit to the board of education all moneys in his possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the board of education 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 education 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 education 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 school funds at the end of each month after the thirtieth day of June of the year in which the board of education appoints a treasurer other than the sheriff shall be transferred by the sheriff to the county board of education not later than the tenth day of the following month.

On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. Such treasurer shall be the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: Provided, That once a board of education has appointed a treasurer other than the sheriff, the sheriff shall not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, such treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will handle within any period of two months. The premium on such bond shall be paid by the board of education.

The board of education 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. However, the county board of education may, in lieu of such bond, accept as security for money deposited securities of the United States, or of a state, county, district or municipal corporation, or federal agency securities. One hundred ten percent of the face or par value of such securities shall not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which such securities are accepted, or the county board of education may accept such securities as partial security to the extent of their
face value for the money so deposited and require bond
for the remainder of the full amount hereinbefore
specified, to be named in the bond, and, in the bond so
required, such acceptance of securities as partial
security and the extent thereof shall be set forth. The
hypothecation of such securities shall be by proper legal
transfer as collateral security to protect and indemnify
by trust any and all loss in case of any default on the
part of the banking institution in its capacity as
depository as aforesaid. All such securities shall be
delivered to or deposited for the account of the county
board of education, and withdrawal or substitution
thereof may be permitted from time to time upon
approval by the county board of education by order of
record, but such collateral security shall be released
only by order of record of the county board of education
when satisfied that full and faithful accounting and
payment of all the moneys has been made under the
provisions hereof. In the event actual possession of such
hypothecated securities is delivered to the county board
of education, it shall make ample provision for the
safekeeping thereof, and the interest thereon when paid
shall be turned over to the banking institution, so long
as it is not in default as aforesaid. The county board of
education may permit the deposit under proper receipt
of such securities with one or more banking institutions
within the state of West Virginia and may contract with
any such institution for safekeeping and exchange of any
such hypothecated securities, and may prescribe the
rules and regulations for handling and protecting the
same.

On and after the first day of July, one thousand nine
hundred seventy-three, all levies and any other school
moneys received by the sheriff and paid to the treasurer
of the county board of education 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 education: Provided, however, That in determining the
depository for board of education 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 West Virginia municipal bond 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.

CHAPTER 47
(Com. Sub. for H. B. 2214—By Delegates Neal and Farley)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vocational rehabilitation; changing the name of the state board of vocational education to the state board of rehabilitation as it relates to services to disabled individuals; and changing the name of the division of vocational rehabilitation to the division of rehabilitation services.

Be it enacted by the Legislature of West Virginia:

That sections one and two, 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. REHABILITATION SERVICES.

§18-10A-1. Definitions.
§18-10A-2. State board of rehabilitation; division of rehabilitation services.
§18-10A-1. Definitions.

As used in this article:

(1) "State board" means the state board of rehabilitation.

(2) "Division" means the division of rehabilitation services established by this article.

(3) "Director" means the director of the division of rehabilitation services.

(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.

(5) "Disabled individual" means any person who has a substantial employment handicap.

(6) "Vocational rehabilitation" and "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 the employment handicap and to enable the individual 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 the 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 rehabilitation services that employs a qualified evaluator to provide evaluations and attendant referrals such as the centers for independent living, and 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.
“Attendant” means a self-employed individual who is trained to perform attendant care services and who works as an independent contractor.

§18-10A-2. State board of rehabilitation; division of rehabilitation services.

For the purposes of this article, the state board of education is hereby designated as the state board of rehabilitation. As such, it is authorized and directed to cooperate with the federal government to the fullest extent in an effort to provide rehabilitation services for disabled persons. To this end, there is hereby established in the state board of rehabilitation a division of rehabilitation services.

Except as to the provisions of article two-b of this chapter and such other code references where the context clearly indicates the provision of vocational education to other than disabled individuals, references in this code to the state board of vocational education as the governing board of vocational or other rehabilitation services or facilities shall mean the state board of rehabilitation. All references in the code to the division of vocational rehabilitation shall mean the division of rehabilitation services, and all references to the director of the division of vocational rehabilitation shall mean the director of the division of rehabilitation services.

CHAPTER 48
(S. B. 394—By Senators Jackson and Tomblin)

[Passed March 13, 1987; in effect ninety days from passage. 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, relating to permitting two precincts to have the same boundary and voting place when there is only one convenient voting place in the district and the precinct serves more than seven hundred registered voters.
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 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 the political division so that the new precincts each contain a number of registered voters within the designated limits. If a county commission fails to rearrange the precincts as required, any qualified voter of the county may apply for a writ of mandamus to compel the performance of this duty: Provided, That when in the discretion of the county commission, there is only one place convenient to vote within the precinct and when there are more than seven hundred registered
voters within the existing precinct, the county commission may designate two or more precincts with the same geographic boundaries and which have voting places located within the same building. The county commission shall designate alphabetically the voters who will be eligible to vote in each precinct so created. Each such precinct shall be operated separately and independently with separate voting booths, ballot boxes, election commissioners and clerks, and whenever possible, in separate rooms. No two of such precincts may use the same counting board.

In order to facilitate the conduct of local and special elections and the use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other geographical districts of the municipality except in instances where found by the county commission to be wholly impracticable so to do. Governing bodies of all municipalities shall provide accurate and current maps of their boundaries to the clerk of any county commission of a county in which any portion of the municipality is located.

The provisions of this section are subject to the provisions of section twenty-eight, article four of this chapter relating to the number of voters in precincts in which voting machines are used.

The county commission shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county and municipalities with the current boundaries of all precincts.

CHAPTER 49
(Com. Sub. for H. B. 2119—By Delegate Riffe)

[Passed February 18, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, 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 five, relating to state ownership of suggestions.

Be it enacted by the Legislature of West Virginia:

That article one-a, 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 five, to read as follows:

ARTICLE 1A. EMPLOYEE SUGGESTION AWARD BOARD.

§5A-1A-5. State ownership of suggestions.

1 The state shall become the sole owner of all suggestions accepted by the employee suggestion award board.

2 The acceptance of a suggestion by the board shall constitute an agreement by the employee and the state that all claims pertaining to the suggestion, immediate and future, on the state of West Virginia are waived.
ARTICLE 2B. ENTERPRISE ZONE AUTHORITY.

§5B-2B-2. Definitions.

§5B-2B-3. Enterprise zone authority created; appointment and terms of members; chairperson's powers.

§5B-2B-4. Duties of the authority.

§5B-2B-5. Enterprise zone tax exemptions.

§5B-2B-6. Administrative regulation exemptions.

§5B-2B-8. Enterprise zone requirements for creation.

§5B-2B-9. Designation of enterprise zones; conditions for preference of enterprise zones.

§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 in an enterprise zone in West Virginia:

(1) With at least fifty percent of its employees who were hired after designation as an enterprise zone and who perform substantially all of their services within an enterprise zone; or

(2) With individuals from one or more of the following three categories constituting at least twenty-five percent of the business's employees who were hired after the designation of an enterprise zone:

(i) Residents of an enterprise zone; or

(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.

(e) "Qualified employee" means any employee who works at least thirty-five hours per week or otherwise employed in a full time capacity by a qualified business and is a resident of West Virginia.

§5B-2B-3. Enterprise zone authority created; appointment and terms of members; chairperson's powers.

There is hereby created the enterprise zone authority which consists of seven members. The following membership of the authority shall be appointed by the governor with the advice and consent of the Senate: One member shall be appointed from a list of three names submitted by the West Virginia labor-management advisory council; one member shall be appointed from a list of three names submitted by the West Virginia municipal league; one member shall be appointed from a list of three names submitted by the West Virginia association of county officials; three members, no more than two of which shall be from the same political party, shall be appointed by the governor to serve at large.

In addition to the gubernatorial appointees, the director of the governor's office of community and industrial development or his designee shall serve as a member and chairperson; further, the director of the governor's office of community and industrial development, shall call the first meeting as soon as practicable.
The members appointed by the governor shall serve a term of four years, except that the members first appointed shall serve for the following terms: Three for a term of one year; two for a term of two years; and one for a term of three years. The governor shall have sole discretion in determining the terms for his initial appointees. The members of the authority, except for the chairperson, shall receive reimbursement for actual and reasonable expenses incurred in the performance of their duties.

The authority shall administer this article and has the following powers and duties:

1. To certify that the criteria of this article for determining which areas qualify as enterprise zones have been met;

2. To monitor the implementation of this article and submit reports evaluating the effectiveness of the program and any suggestions for legislation to the governor and Legislature on the second Wednesday of January of each year;

3. To conduct a continuing evaluation program of enterprise zones;

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;

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; and
(8) To employ such staff as necessary to carry out the purposes of this article.

§5B-2B-4. Duties of the authority.

(a) 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.

(b) 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) A qualified business shall be allowed as a credit against the taxes imposed on it by articles twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one and twenty-four, chapter eleven of this code, fifty percent of the amount of interest expense it accrued or paid during the tax year to purchase inventory held for sale or use by it in the enterprise zone, or real property located in the enterprise zone, or tangible personal property having its permanent business situs in the enterprise zone: Provided, That the amount of credit allowed shall be applied to these taxes in the order stated above and is limited to fifty percent of such interest expense or the amount of such taxes, whichever is less, with any unused credit being forfeited, and the property must have been purchased after the enterprise zone was designated.

(2) The sale of building materials for use in remodeling, rehabilitation, or new construction in an enterprise zone and the sale of new and used equipment and machinery shall be exempt from the taxes imposed by
articles fifteen and fifteen-a, chapter eleven of this code, when purchased by a qualified business for use in the enterprise zone. To claim exemption from tax the purchaser must give the seller a properly executed exemption certificate claiming exemption from tax under this provision.

(3) Motor vehicles purchased from a seller located within West Virginia 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 upon new employees hired after the designation of an enterprise zone and meets the requirements of section 2(c)(2) of this article and 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 net operating losses generated in an enterprise zone after an area has been designated as an enterprise zone 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 applicable state regulations for each qualified business 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-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 or consists of noncontiguous tracts commonly owned by a municipal or county government or a local development authority;

(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 not more than five enterprise
zones. In the fourth calendar year after the year one
thousand nine hundred eighty-six, the authority may
designate not more than three enterprise zones. In
deciding which areas should be designated as enterprise
zones, the authority shall give preference to:

(1) Areas with the highest levels of poverty, unem-
ployment and general distress;

(2) Areas which have the widest support from the
government seeking designation, the community, resi-
dents, local business and private organizations; and

(3) Areas for which the government seeking designa-
tion 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.
AN ACT to amend and reenact section seven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to estate taxes; and when notice of death must be given to the tax commissioner.

Be it enacted by the Legislature of West Virginia:

That section seven, article eleven, 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 11. ESTATE TAXES.


1 The personal representative, within three months after the decedent's death, or within a like period after qualifying as such, shall give written notice of the decedent's death to the tax commissioner on the form prepared and published by the tax department known as the preliminary notice and report.

CHAPTER 52

(H. B. 2854—By Delegates Humphreys and Garrett)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section fourteen, article one, chapter forty-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. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.

The real and personal estate of every deceased person, or in which such deceased person had an interest at the time of his death, shall be appraised as follows: The commission by whose order any person is authorized to act as personal representative, or the fiduciary supervisor thereof, shall, upon the qualification of such personal representative and at the time thereof appoint not less than three nor more than five appraisers, any three of whom may act, in the county in which the will of the deceased is probated or administration is granted upon his estate, and a like number in every other county in which there may be any real or personal estate of the deceased: Provided, That at the request of the personal representative, the appraisers appointed in the county in which the will of the deceased is probated or administration is granted upon his estate shall have the authority to act in any county in the state in which there may be any real or personal estate of the deceased and the commission or fiduciary supervisor shall so designate in the order of appointment, and, in such event, it shall be unnecessary to appoint appraisers in every other county in which there may be any real or personal estate of the deceased. Such appraisers, after first taking an oath for the purpose, shall list and appraise at its real and actual value all the real estate and all tangible property of every description owned by the deceased at the time of his death including, but not limited, to all real estate and tangible property in which the decedent had an interest as joint tenant or otherwise or in which any beneficial interest passes to another person by reason of the death of such decedent whose estate is being so appraised and irrespective of whether
such real estate or tangible property is subject to administration and located in each county or the counties, as the case may be, and they shall also list and appraise at its real and actual value all his intangible property of every description, including moneys, credits, investments, annuities, life insurance policies, (irrespective of whether such policies are payable to named beneficiaries or in trust or otherwise), judgments and decrees for moneys, notes, bonds, accounts and all other evidences of debt, whether owing to him by persons or corporations in or out of the state, and the number and value, including both the par value, if any, and the actual value, of any shares of capital stock owned by him in any corporation, and every other item of intangible property of whatsoever nature or kind, including all intangible property in which the decedent had an interest as joint tenant or otherwise or in which any beneficial interest passes to another by reason of the death of such decedent, and irrespective of whether such intangible property is subject to administration and whether located in this state or elsewhere. Any real estate or interest therein so appraised shall be identified with particularity and description, shall identify the source of title in the decedent and the location of such realty for purposes of real property ad valorem taxation. Such appraisers shall designate such intangible property as good, bad or doubtful as to them may appear to be correct, and by whom owing and when payable, and from what time such of them as are interest-bearing bear interest. Every note, bond or evidence of debt shall have endorsed thereon the word "appraised," under which each acting appraiser shall sign his name. No judgment shall be rendered by any of the courts of the state upon such note, bond or evidence of debt unless and until the same shall be first shown to have been listed by the appraisers. Any note, bond or evidence of debt which bears the endorsement by the appraisers, as above required, shall need no further proof that the same was listed. In addition to all other information required by law, the appraisement shall contain and include a questionnaire designed and formulated by the tax commissioner which is designed for the purpose of
examining the personal representative to determine that
he has made a thorough and proper search and inves-
tigation as to the existence and value of each and every
kind and species of property required to be included
within, and subject to appraisement by, the provisions
of this or any other section of this code, which said
questionnaire shall be completed and answered upon the
oath or adjuration of each such appraiser and the
personal representative or fiduciary.

The several appraisements, lists and questionnaire
aforesaid shall be executed in triplicate and shall be
signed by the appraisers who made the same, and be
approved by the personal representative, and be
forthwith returned to the fiduciary supervisor. Such
supervisor shall inspect such appraisements, lists and
questionnaire, see that the same are in proper form, and
that all property, if any, suggested by the questionnaire
is included within the appraisement, and, within ten
days after they are received and approved by him,
deliver two copies of the same to the clerk of the county
commission, who shall record the same, with the
certificate of approval of the supervisor, and mail one
copy of the same to the tax commissioner of West
Virginia. The date of return of an appraisement shall
be entered by the clerk of the county commission in his
record of fiduciaries. Every such appraisement and list
shall be prima facie evidence of the value of the property
embraced therein, and that the personal estate em-
braced therein which is subject to administration came
to the hands of the personal representative. Such
appraisers shall each receive a fee of not less than one
dollar nor more than one hundred dollars per day, to be
fixed by such supervisor in accordance with the amount
of the estate and the work involved in making the
appraisement, and their actual expenses necessarily
incurred in making such appraisement, and such fees
and expenses and the supervisor's approval thereof shall
be noted in the fiduciary supervisor's certificate. No
person shall be permitted by any means whatsoever to
avoid the appraisement and listing of his estate and of
all property, real, tangible and intangible, of whatsoever
nature and kind, in which a beneficial interest passes
to another by reason of the death of the decedent and
irrespective of whether such property is subject to
administration as herein provided, nor shall his personal
representative be permitted to do so. Any personal
representative who fails, refuses or declines to comply
with the provisions of this section shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than twenty-five dollars nor more than five
hundred dollars.

Every personal representative shall have authority to
retain or hire the services of such expert or experts as
may be deemed appropriate to assist and advise the
appraisers in and about their duties in appropriately
and accurately appraising all or any part of the assets
or property to be appraised according to the provisions
of this section. Such expert or experts so retained or
hired shall be compensated a reasonable sum by the
personal representative from the assets coming into his
hands or of which he is embraced, which compensation
and the reasonableness thereof shall be subject to review
and approval by the county commission, upon recom-
mendation of the fiduciary supervisor.

CHAPTER 53
(H. B. 2788—By Delegates Humphreys and Garrett)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two,
chapter forty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to proof and allowance of claims against estates of
decedents; reference to fiduciary commissioner; and
when reference will be made.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter forty-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. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-1. Reference of decedents' estates; proceedings thereon.

(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his decedent shall, by order of the county commission to be then made, be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary and proper for the settlement of the estate: Provided, That in counties where there are two or more such commissioners, the estates of decedents shall be referred to such commissioners in rotation, in order that, so far as possible, there may be an equal division of the work: Provided, however, That if the personal representative shall deliver to the clerk an appraisement of the assets of the estate showing their value to be fifty thousand dollars or less, exclusive of property held by the decedent and another person or other persons as joint tenants with rights of survivorship, the clerk shall record said appraisement and publish a notice as set forth herein: Provided further, That a fiduciary commissioner may not charge to the estate a fee greater than two hundred dollars for the settlement of an estate, except upon approval of the county commission because of complicating issues or problems attendant to such settlement and amount of time involved in and about their resolution. The personal representative shall, within two months from the date of recordation of the appraisement in such case, make report to the clerk of his receipts, disbursements and distribution, and shall make affidavit that all claims against the estate, for expenses of administration, taxes and debts of the decedent, have been paid in full; the clerk shall be entitled to collect and receive a fee of ten dollars for recording such report and affidavit, and for publication of the notice hereinafter provided, said fee to be in lieu of any other fee provided by law for recording a report of settlement of the accounts of a decedent's personal
representative. It shall be the duty of the clerk, at least once a month, to cause to be published once a week for two successive weeks in a newspaper of general circulation within the county of the administration of the estate, a notice substantially as follows:

NOTICE OF FILING OF ESTATE ACCOUNTS

I have before me the account of the executor(s) or administrator(s) of the estates of the following deceased persons:

Any person having a claim against the estate of any such deceased person, or who has any beneficial interest therein, may appear before me or the county commission at any time within thirty days after first publication of this notice, and request reference of said estate to a commissioner or object to confirmation of said accounting. In the absence of such request or objection, the accounting may be approved by the county commission.

Clerk of the County Commission

of ______________ County, W. Va.

If no such request or objection be made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, and thereupon the personal representative and his surety shall be discharged; but if such objection or request be made, the county commission may confirm the accounting or may refer the estate to one of its fiduciary commissioners: Provided, That the personal representative shall have twenty days after the date of the filing of a claim or claims against the estate of the decedent to approve or reject said claim before said estate shall be referred to a fiduciary commissioner.

(b) If upon the return and recordation of the appraise-
beneficiary of the estate and that said beneficiary is
cOMPETENT at law, there shall be no further administra­
ATION upon the estate, and no reference to a fiduciary
commissioner, unless, for due cause, the county commis­
SION shall order further administration and a reference
to a fiduciary commissioner: Provided, That the personal
representative shall have twenty days after the date of
the filing of a claim or claims against the estate of the
decedent to approve or reject said claim before said
estate shall be referred to a fiduciary commissioner. The
bond of the personal representative and his surety shall
be discharged one year after the date of qualification of
the personal representative if no claim shall have been
filed with the county clerk and no suit shall have been
instituted against the personal representative. The clerk
shall publish a notice once a week for two successive
weeks in a newspaper of general circulation within the
county of administration of the estate, substantially as
follows:

NOTICE OF UNADMINISTERED ESTATE

Notice is hereby given that, there being only one
beneficiary of the estate of the deceased, there will be
no administration of said estate unless within ninety
days demand for administration be made by a party in
interest or an unpaid creditor.

Dated this _____ day of ________________________

__________________________

Clerk of the County Commission

of ____________________. County, W.Va.

The clerk shall charge to the personal representative,
and receive, the reasonable cost of publication of said
notice.

If no person demands administration and no creditor
appears in response to the notice hereinabove provided,
alienation of the decedent's real estate more than six
months after the date of the notice to a bona fide
purchaser for value without notice of any claim against
the estate shall be free of any lien for taxes or debts of
AN ACT to amend and reenact section two, article four, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to when fiduciaries are required to make an accounting; and exhibit of accounts to the fiduciary commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-2. Fiduciaries to exhibit accounts for settlement.

A statement of all the money which any personal representative, guardian, curator or committee, has received, become chargeable with or disbursed, within one year from the date of his qualification, or within any succeeding year, together with the vouchers for such disbursements, shall, within two months after the end of every such period be exhibited by him before the fiduciary commissioner to whom the estate or trust has been referred. If any fiduciary fails to make an exhibit, the fiduciary commissioner before whom he should make the exhibit shall proceed against him in the appropriate circuit court, and the court shall impose the same penalties, unless the fiduciary is excused for sufficient reason, as are provided in cases where fiduciaries fail to return appraisements.
AN ACT to amend and reenact section one, article eight, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale, conveyance and management of a decedent’s real estate; powers of executor and administrator with will annexed with respect to the sale of their decedent’s real estate; and the effect of such amendment upon conveyance previously made.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. REAL ESTATE OF DECEDENTS.

§44-8-1. Sale, conveyance and management of decedent’s real estate; powers of executor and administrator with will annexed.

1 Real estate devised to be sold shall, if no person other than the executor be appointed for the purpose, be sold and conveyed by the executor, and the proceeds of sale, or the rents and profits of any real estate which the executor is authorized by the will to receive, shall be received by the executor who qualifies, or by his successor. If none qualify, or the one qualifying shall die, resign, or be removed before the trust is executed or completed, the administrator with the will annexed shall sell or convey the lands so devised to be sold, and receive the proceeds of sale, or the rents and profits aforesaid, as an executor might have done.

13 When any will heretofore or hereafter executed gives to the executor named therein the power to sell the testator’s real estate, which has not been theretofore specifically devised therein, the executor may sell any such real estate unless otherwise provided in said will.
If such will directs the sale of testator's real estate but names no executor, or names an executor and the executor dies, resigns or becomes incapable of acting, and an administrator with the will annexed is appointed, the administrator with the will annexed may sell such real estate as aforesaid.

Nothing in this section shall be deemed or construed so as to invalidate any conveyance made prior to the effective date of the amendments thereto adopted by the Legislature at its regular session held in the year one thousand nine hundred eighty-seven.

CHAPTER 56
(H. B. 3121—By Delegate J. Martin)

[Passed March 14, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-four, relating to a West Virginia Forest Management Review Commission; short title; legislative findings; purposes and intent; purposes of article; commission created; commission composition; appointment of members; powers and responsibilities; compensation and expenses of members; expenses of the commission; reports; commission termination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. WEST VIRGINIA FOREST MANAGEMENT REVIEW COMMISSION.

§5-24-1. Short title.
§5-24-2. Legislative findings, purposes and intent.
§5-24-3. Commission created; composition; appointment of members.
§5-24-4. Powers, duties and responsibilities.
§5-24-5. Appalachian hardwood research center; creation; duties; responsibilities.

§5-24-6. Compensation and expenses of members; expenses of the commission.

§5-24-7. Reports.


§5-24-1. Short Title.

1 This article shall be known by and may be cited as "The Forestry Development Act of 1987."

§5-24-2. Legislative findings, purposes and intent.

1 The Legislature hereby finds and declares:

2 (a) That the future economic base of West Virginia is tied to the development of the forestry industry.

3 (b) That efforts to enhance and promote the expansion of the forestry industry should be coordinated among the several state and federal agencies, commissions, boards, committees, associations and other entities.

4 (c) That the development of the forestry and wood products industry will require: (1) The development of multiple-use, sustained-yield management plans for non-industrial timber tracts; (2) the development of products and markets for the grade of materials that currently comprise a majority of the state’s available resources; (3) a stable and predictable tax program for both new and existing firms; (4) a centralized protection program that will reduce risk from fire and pestilence; and (5) financial assistance for the attraction and expansion of new and existing secondary manufacturing facilities with special emphasis on assistance for smaller firms employing less than twenty persons.

5 (d) That the present and future welfare of the people of the state require, as a public purpose, a continuing effort toward the promotion and development of the forestry and wood products industry.

6 (e) In recognition of these findings and purposes, it is in the best interest of this state to create the West Virginia forest management review commission as a statutory body.
§5-24-3. Commission created; composition; appointment of members.

The West Virginia forest management review commission is hereby created for the purposes as set forth in this article. This commission shall be comprised of four members from the West Virginia Senate, a co-chairman and three members to be appointed by the Senate President, and four members of the House of Delegates, a co-chairman and three members to be appointed by the Speaker; four members to be representatives from the commercial forest industry in the state, and three members of the public-at-large. The seven nonlegislative members shall be appointed by the governor, with the advice and consent of the Senate. Two members shall be appointed to serve a term of two years; three members shall be appointed to serve a term of four years; two members shall be appointed to serve a term of six years. The successor of each such appointed member shall be appointed for an overlapping term of six years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only to the remainder of such term. Each board member shall serve until the appointment of his successor.

§5-24-4. Powers, duties and responsibilities.

The commission shall have the power, duty and responsibility to:

(a) Generally assist in the retention, expansion and attraction of forestry and forestry related industries by creating a climate for the development and support of the industry.

(b) Coordinate the current efforts to enhance and promote the expansion of the forestry industry among the several state and federal agencies, commissions, boards, committees, associations and other entities.

(c) Urge the development of multiple-use sustained-yield management plans for nonindustrial timber tracts.

(d) Develop products and markets for the grade of materials that currently comprise a majority of the state’s resources.
(e) Recommend a stable and predictable tax program for both new and existing firms in the state.

(f) Develop a centralized and enhanced protection program that will reduce risks from fire and pestilence.

(g) Develop financial assistance for the attraction and expansion of new and existing secondary manufacturing facilities, with special emphasis on assistance for smaller firms employing less than twenty persons.

(h) Utilize recognized research expertise of appropriate existing educational, public and industrial institutions or agencies of the state. Research shall include economic development efforts in West Virginia, including silviculture, woodland management, forest management, the development of new products as well as other products designed to aid forestry development.

(i) Employ, if needed, and only with prior approval of the West Virginia Legislature's joint committee on government and finance, such staff as may be necessary. In the event an executive director may be necessary, such individual shall be a forestry graduate of a four-year college of forestry and shall, in addition, have administrative and research experience, preferably, but not mandatorily, with at least five year's experience in government.

§5-24-5. Appalachian hardwood research center; creation; duties; responsibilities.

The Appalachian hardwood research center is hereby created, in association with, and the director shall be a member of the faculty of, the forestry school at West Virginia University. The center shall utilize, to the extent possible, the programs already created under the vandalia partnership program as provided for in chapter five-b, article two-a, section four, et seq., of this code.

The Appalachian hardwood research center at West Virginia University is directed to establish priorities and coordinate its research functions with the governor.
and the Legislature. The center shall: (1) Develop and maintain a computerized inventory of all possible scientific information relating to appalachian hardwood tree species, silviculture, management, products and product development; (2) initiate research projects, including applied research, either originally or by request, designed to aid forestry economic development efforts in West Virginia, including the development of new products as well as other projects designed to increase the utility of low grade appalachian hardwoods; and (3) be generally responsible for encouraging the development of research needed by the forest industry of the state.

§5-24-6. Compensation and expenses of members; expenses of the commission.

The members of the commission shall be reimbursed for all of their reasonable and necessary travel and other expenses incurred in connection with carrying out their duties as members, which expenses shall be paid in the manner and form prescribed by law. Members of the commission may receive no other compensation for their services on or with the commission.

§5-24-7. Reports.

The commission shall report to the Legislature's joint committee on government and finance as to the progress being made in forestry development activity by state governmental entities and projects, and shall report, at least annually, but more often if requested, the financing deemed necessary to continue funding, if desired, of forestry development activities.


The commission shall be terminated on the first day of July, one thousand nine hundred ninety-two, or until review of its functions shall be undertaken pursuant to the provisions of sections nine, ten and eleven, article ten, chapter four of this code.
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CHAPTER 57
(S. B. 225—By Senators Ash and Sharpe)

[Passed February 26, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact article ten-f, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to physically disabled persons and access to public use buildings, facilities and travelways to and from the same; purpose, definitions, applications, and exclusions under article; creating state structural barriers compliance board: Its membership, terms, meetings, expense reimbursement, and powers and duties; requirements for final plan certification, relief from requirements and coordination with state fire marshal; required review and approval by state fire marshal and on specified standard basis even prior to appointment of board members or promulgation of any rules and regulations, and in absence of other authorized certification on such basis; preparation, approval and promulgation of rules and regulations of the board; applicable effective date; and subjecting of board to sunset, after performance audit, after specified date.

Be it enacted by the Legislature of West Virginia:

That article ten-f, 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 10F. DISABLED PERSONS AND PUBLIC USE BUILDINGS AND FACILITIES.

§18-10F-1. Purpose; definition of "public use building or facility."
§18-10F-2. Application of article.
§18-10F-3. Rules and regulations.
§18-10F-4. State structural barriers compliance board created; membership; expenses.
§18-10F-5. Duties of state structural barriers compliance board.
§18-10F-6. Enforcement of article; early enforcement by state fire marshal.
§18-10F-7. Board subject to sunset as governmental entity, after performance audit conducted.
§18-10F-1. Purpose; definition of “public use building or facility.”

It is hereby declared to be the public policy of this state that all public use buildings, sidewalks, curbs and facilities covered by this article, as specified in section two of this article, be accessible to and functional for the physically disabled, without loss of function, space or facilities insofar as the general public is concerned.

As used in this article, a public use building or facility is one to which the public has a general right of access and includes the ways of travel to and from the same, but does not include:

1. Apartment houses with less than twenty units, row houses, rooming houses or single-family dwellings;
2. Garages, hangers or boathouses;
3. Buildings classified as hazardous occupancies;
4. Warehouses;
5. Buildings specifically built for field service purposes such as, but not limited to, conservation fire towers, fish hatcheries or tree nursery buildings; or
6. Residence halls at colleges or universities which have one or more resident halls so constructed as to allow physically disabled persons reasonable means of access and use of such buildings.

§18-10F-2. Application of article.

The provisions of this article and the reasonable rules and regulations promulgated hereunder shall apply to all new construction and all substantial-renovation construction wherein values of fifty percent or more of the existing market value of the building or facility will be added, and whether such are temporary, emergency or permanent buildings, facilities or travelways to and from the same, to be used by the general public, either privately or publicly owned, and in connection with which such construction is begun after the effective date of this article creating the new state structural barriers compliance board.
§18-10F-3. Rules and regulations.

(a) In order to implement the provisions of this article, the structural barriers compliance board shall be responsible for approving and promulgating reasonable rules and regulations which shall be prepared and approved by the state fire marshal and based on the American National Standards Institute's specifications for making buildings and facilities accessible to and usable to physically disabled persons. The structural barriers compliance board in promulgating rules and regulations shall take into account the following:

   (1) Use of buildings, sidewalks, curbs and facilities by persons confined to wheelchairs, persons using crutches or other walking aids, persons afflicted by sight or hearing loss, persons disabled by age and any other persons whose mobility is limited;

   (2) Frequency of use by physically disabled persons as above enumerated;

   (3) Requirements of the state fire code for the safety of the mobility impaired; and

   (4) Additional construction cost required to comply with the provisions of this article and such reasonable rules and regulations.

The structural barriers compliance board shall have the authority to except buildings, sidewalks, curbs and facilities from the provisions of this article and such reasonable rules and regulations, in whole or in part, if, in its opinion, compliance therewith would create a financial hardship, be impractical or serve no benefit.

(b) All such reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(c) No rule or regulation promulgated hereunder shall require the construction of elevators in buildings or facilities not constructed in whole or in part by the use of state, county or municipal funds or the funds of any other political subdivision of this state when such buildings or facilities are less than three stories in height.
§18-10F-4. State structural barriers compliance board created; membership; expenses.

There is hereby created the state structural barriers compliance board which shall consist of five voting members appointed by the governor, upon the recommendation of the state board of vocational education. This structural barriers compliance board shall consist of one member who shall have severely limited mobility, one member who shall be a professional human services worker, one member who shall be a professional architect or engineer, one member who shall have experience in the building industry and one who shall be from the general public. The director of the division of vocational rehabilitation shall serve as an ex officio member of the board. The members shall serve for a term of three years except of those initially appointed, one shall be appointed for a term of one year, two for a term of two years and two for a term of three years. A vacancy shall be filled in the same manner as the original appointment for the balance of the unexpired term. The members of the board shall receive no compensation for their services on such board, but they shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board. The board shall meet at least four times per year, and with such additional meetings as needed. The board shall elect a chairperson from among its members, to serve for one year, who may call special meetings when needed.

§18-10F-5. Duties of state structural barriers compliance board.

The state structural barriers compliance board shall promulgate reasonable rules and regulations; hear appeals by persons affected by this article with regard to compliance requirements and hear complaints by disabled persons who are to be provided access to public buildings by the article, with such hearings to take place within a reasonable time and as soon as practicable. The board shall keep statistics on the number of plans reviewed and violations found by the state fire marshal, the number of variances allowed by the board and the
number and disposition of complaints by disabled persons. A report on the activities of the board, including these statistics, shall be made to the governor annually.

§18-10F-6. Enforcement of article; early enforcement by state fire marshal.

It is the duty of any owner to comply with the provisions of this article and all rules and regulations. For the purposes of this section "owner" means any individual, corporation, partnership, trustee, association or other entity that owns, leases or has possession and control of the public use building, or who will own, lease or take possession and control of such building or facility upon its completion, and includes the state, any county, municipality or other subdivision or department thereof.

A set of final plans shall be certified by a registered architect or registered professional engineer practicing within the confines of their respective registration laws, and such owners shall notify the fire marshal of such certification, or shall submit to the fire marshal or to a fire prevention bureau or a building department, approved by the fire marshal, a set of final plans for review and approval prior to construction, to assure compliance with the provisions of this article and with any and all reasonable rules and regulations promulgated hereunder.

In order to achieve early compliance, the state fire marshal shall review, approve and certify final plans as being in compliance with and based upon the American National Standards Institute's specifications, as required in section three of this article, even before appointment of board members or promulgation of any rules and regulations, and in the absence of any such prior certification on such basis as authorized in this section by a registered architect or registered professional engineer. Whenever the state fire marshal ascertains that a building or facility or the way of travel to and from the same is about to be constructed, with such construction to begin after the effective date of this article creating the new state structural barriers compliance board, which construction is in violation of
the provisions of this article or any such reasonable rules
and regulations, he or she shall take measures to correct
the deficiency. To enforce these rules and regulations,
the state fire marshal may petition the circuit court of
the county where the construction is involved for an
order to compel compliance. The person who must
comply with the provisions of this article may petition
the state structural barriers compliance board for a
variance in specific cases where compliance would be an
extraordinary financial burden or would otherwise be
unreasonable.

§18-10F-7. Board subject to sunset as governmental
entity, after performance audit conducted.

1 The state structural barriers compliance board shall
2 be subject to termination and sunset, after conduct of
3 performance audit thereon, pursuant to the provisions
4 of article ten, chapter four of this code, six years after
5 the effective date of the creation thereof, together with
6 allowance for subsequent periods applicable to the
7 winding up of the affairs of such board.

CHAPTER 58

(H. B. 2858—By Delegates Phillips and Hoblitzell)

[Passed March 10, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article
ten-g, 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 four new
sections, designated sections four, five, six and seven, all
relating to operation of food service facilities in public
office buildings by the division of vocational rehabilita-
tion; definitions; effect on present facilities; licenses for
operation of facility; vending machine income; appeals
from decisions of the division of vocational rehabilita-
tion; establishment of a committee of blind vendors; and
responsibilities.

Be it enacted by the Legislature of West Virginia:
That sections two and three, article ten-g, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to further amend said article ten-g by adding thereto four new sections, designated sections four, five, six and seven, all to read as follows:

ARTICLE 10G. PROVIDING OF FOOD SERVICE IN PUBLIC OFFICE BUILDINGS BY THE WEST VIRGINIA DIVISION OF VOCATIONAL REHABILITATION.

§18-10G-2. Definitions.
§18-10G-3. Operation of food services in public office buildings by West Virginia division of vocational rehabilitation; operation of food service by governmental agency in violation of article prohibited.
§18-10G-4. Licenses.
§18-10G-5. Vending machine income.
§18-10G-6. Appeals.
§18-10G-7. Committee of blind vendors.

§18-10G-2. Definitions.

For the purpose of this article:

(a) "Active participation" means an ongoing process of negotiations between the division of vocational rehabilitation and the committee of blind vendors to achieve joint planning of policies, procedures and standards affecting the overall operation of the "food services facilities program" prior to their implementation by the division of vocational rehabilitation. It is understood that the division of vocational rehabilitation bears final responsibility for the administration and operation of the "food services facilities program," including the assurance of active participation by the committee of blind vendors.

(b) "Blind person" means a person whose central acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, but is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in
diseases of the eye or an optometrist, whichever the individual shall select.

(c) "Blind vendor" means a blind licensee who is operating a food services facility on federal, state, public or private property.

(d) "Committee of blind vendors" means an officially constituted body functioning in an advisory capacity of the division of vocational rehabilitation's food services facilities program. This committee is composed of licensed blind vendors, elected biennially and established, constituted and maintained in accordance with applicable federal regulations.

(e) "Food service facility" means and includes a restaurant, cafeteria, snack bar, vending machine for the dispensing of foods, beverages, confections, tobacco or other products for human consumption, and other facilities for the sale or providing of goods and services for the purposes customarily offered in connection with the operation of any of the foregoing. The term "food service facility" does not include, and there is expressly excepted therefrom, goods and services sold, dispensed from, or provided by the veterans administration and the facilities for the sale, dispensing or providing thereof.

(f) "Governmental agency" means and includes the state of West Virginia, each instrumentality and agency thereof, and every county, city and town within and every political subdivision within the state of West Virginia, except county boards of education, the West Virginia board of regents, the department of health, the department of commerce and the department of corrections.

(g) "Licensee" means all persons licensed under the division of vocational rehabilitation to operate food service facilities under the Randolph/Sheppert Act, Title XX, United States Code 107, et seq.

(h) "Public office building" means and includes the state capitol, all county courthouses, all city and town halls, all buildings used primarily for governmental
offices of the state and of any county, city and town within the state, but does not include buildings used for institutions under the jurisdiction of the West Virginia board of regents, the department of health, the department of commerce and the department of corrections.

(i) "Vending machine income" means receipts other than those of a blind licensee from the operation of vending machines on public property after deducting the cost of goods sold when machines are operated, serviced or maintained by, or with the approval of the division of vocational rehabilitation, or commissions paid to other than a licensee by a commercial vending concern which operates, services or maintains vending machines on public property for or with the approval of the division of vocational rehabilitation.

(j) "Designee" means an individual or an organization of individuals legally constituted, and under the jurisdiction of the division of vocational rehabilitation, doing business in the state of West Virginia, to assist the state agency with the administration and supervision of the food services facilities program.

§18-10G-3. Operation of food service in public office buildings by West Virginia division of vocational rehabilitation; operation of food service by governmental agency in violation of article prohibited.

(a) If a governmental agency proposes operating in a public office building a food service facility, whether such operation be of a food service facility in existence on the effective date of this article or be one thereafter to be instituted, the governmental agency, before continuing such existing operation beyond the period of six months immediately following the effective date of this article or before instituting such proposed new operation, shall in writing offer to the division of vocational rehabilitation the opportunity to operate such food service facility in such public office building. If there is a food service facility in operation in a public office building that is being operated by a blind person not covered or supervised as part of the federal or state
rehabilitation program prior to the effective date of the
amendments to this article, the blind operator shall be
permitted to operate the food service facility until the
operator ceases to operate or control that food service
facility, after which time that food service facility shall
become a part of the food service facility program
administered by the division of vocational rehabilitation.

(b) If the division of vocational rehabilitation within
sixty days from the receipt of the offer mentioned in
subsection (a) of this section elects to operate such food
service facility as is mentioned in the offer and if the
governmental agency by which such offer was made
does not, within such sixty-day period, make the
determination mentioned in subsection (d) of this section
in the manner prescribed in that subsection, the division
of vocational rehabilitation, or its designee, may
institute and conduct the operation of such proposed
food service facility in such public office building
without the payment of rent or other compensation for
the premises occupied by it in the rendition of such
service or for the privilege of conducting such operation.

(c) If the division of vocational rehabilitation under
the authority of subsection (b) of this section institutes
and operates such food service facility as is mentioned
therein, the governmental agency shall not during the
course of such operation, operate a food service facility
in such public office building or by contract, lease,
license, or otherwise, permit any other person, firm,
corporation or agency to do so.

(d) If the division of vocational rehabilitation within
sixty days from the receipt of the offer mentioned in
subsection (a) of this section rejects or fails to accept the
offer, or the governmental agency making the offer
determines, in good faith and after a full and thorough
study of the relevant circumstances, that the division of
vocational rehabilitation is unable to operate such
proposed food service facility, or that the division of
vocational rehabilitation accepted such offer, but, within
the period of six months from such acceptance, failed
to institute such food service facility, such proposed food
service facility may thereupon be provided in such other
manner as may be permitted by law, free from the
requirements of this article, and the division of voca-
tional rehabilitation may not thereafter, without the
express permission of the offering agency, institute such
proposed food service facility in the public office
building designated in such offer. If the governmental
agency which made the offer makes the determination
of inability of the division of vocational rehabilitation to
operate the proposed food service facility, the govern-
mental agency shall, within the aforementioned sixty-
day period, provide the division of vocational rehabili-
tation with a full written statement of the reasons upon
which such determination was predicated, and a food
service facility may not be operated in such public office
building free from the requirements of this article until
the written statement mentioned in this subsection is
first given.

(e) Notwithstanding any other provisions contained in
this article, no governmental agency may by reason of
the provisions of this article take any action which will
result in the violation of the terms of any valid contract,
lease or license existing on the effective date hereof, nor
may such governmental agency be precluded from
extending the period of such an existing contract, lease
or license upon the same terms, and with the same
contracting parties, as in the contract, lease or license
so extended.

§18-10G-4. Licenses.

The division of vocational rehabilitation shall issue a
license for the operation of a food service facility to any
blind person who qualifies for a license in accordance
with the criteria which has been established by the
division of vocational rehabilitation and the committee
of blind vendors. In issuing any license, the division of
vocational rehabilitation shall give preference to any
blind person who is a resident of the state of West
Virginia. Each license issued shall be for an indefinite
period but may be terminated by the division of
vocational rehabilitation after affording the licensee an
appeal in accordance with the applicable rules and
procedures, after the division of vocational rehabilita-
tion and the committee of blind vendors are both satisfied that the food service facility is not being operated in accordance with their rules and procedures.

§18-10G-5. Vending machine income.

(a) If an existing or a new vending machine or a replacement for an existing vending machine is installed after the effective date of the amendments to this article on any public property, vending machine income shall accrue to the licensed blind person operating the food service facility on the same property or, if none, to the division of vocational rehabilitation. The licensed blind person, by contract or otherwise, shall be responsible for servicing and maintaining the vending machine or machines from which vending machine income is received.

(b) Vending machine income which accrues to the division of vocational rehabilitation pursuant to subsection (a) may be used for the following:

(1) Maintenance and replacement of equipment;
(2) Purchase of new equipment;
(3) Management services;
(4) Assuring a fair minimum return to vendors; and
(5) Establishing retirement funds, health insurance contributions, paid sick leave and paid vacation time for blind vendors.

(c) If vending machine income which accrues to the division of vocational rehabilitation pursuant to subsection (a) is limited, it may be used to earn federal funds on a matching basis.

§18-10G-6. Appeals.

(a) Any blind person aggrieved by a decision of the division of vocational rehabilitation under this article may apply for an administrative review or a full evidentiary hearing to be conducted in accordance with the procedures established and approved by the division of vocational rehabilitation and the committee of blind vendors.
(b) The division of vocational rehabilitation or any aggrieved blind vendor may appeal any unfavorable ruling rendered in accordance with this article to the circuit court of Kanawha County or to the circuit court of the county in which the blind vendor resides.

§18-10G-7. Committee of blind vendors.

(a) The division of vocational rehabilitation shall provide for the establishment and operation, including the payment of all reasonable expenses, of a committee of blind vendors to be elected biennially by the licensed blind vendors. Members of the committee of blind vendors shall be elected by secret ballot and the division of vocational rehabilitation in cooperation with the members of the committee of blind vendors shall adopt rules and regulations pertaining to the election of members and the filling of vacancies that may occur on the committee of blind vendors that will assure every blind vendor an opportunity to cast a secret ballot.

(b) The committee of blind vendors shall actively participate in an advisory capacity in the carrying out of all program management responsibilities assigned to the division of vocational rehabilitation in this article, and the division of vocational rehabilitation shall assure active participation with this committee.

These advisory responsibilities include:

(1) Major administrative decisions in policy and program development decisions affecting the overall administration of the state's food services facilities program;

(2) Receiving and transmitting grievances at the request of blind vendors and serving as an advocate for blind vendors in connection with such grievances;

(3) Development and administration of a state system for the transfer and promotion of blind vendors;

(4) Development of training and retraining programs for blind vendors; and

(5) Sponsorship of meetings and instructional conferences for blind vendors within the state.
AN ACT to amend and reenact section nine-a, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public water systems generally; defining the term "public water system"; authorizing legislative rules to prescribe the maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals, to establish treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer, and to establish provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level which would adversely affect the health of the consumer; authorizing legislative rules prescribing minimum requirements for: Sampling and testing, system operation, public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section, record keeping, laboratory certification, and procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations; authorizing legislative rules establishing requirements covering the production and distribution of bottled drinking water and establishing requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water; empowering authorized representatives of the state board of health to enter any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspection, sampling or testing; requiring that records or information reasonably required for a complete inspection be furnished;
making a violation of this section a misdemeanor and prescribing the penalties therefor; authorizing the state board of health or the state director of health, or his authorized representative to seek injunctive relief in the circuit court of the county in which all or part of a public water system is situated for threatened or continuing violations; providing civil penalties for a willful violation of this section, or of any of the regulations or orders issued thereunder; and requiring that all regulations authorized under this section be promulgated by legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

Be it enacted by the Legislature of West Virginia:

That section nine-a, 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.

§16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorizing inspections; penalties.

A public water system is any water supply or system which regularly supplies or offers to supply, piped water to the public for human consumption, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include: (1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system shall not include a system which meets all of the following conditions: (1) Which consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition; (3) which does not sell water to any person; and (4) which is not a carrier conveying passengers in interstate commerce.
The state board of health shall prescribe by legislative rule the maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals, and, if it deems appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. Such rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level which would adversely affect the health of the consumer.

It shall further prescribe by legislative rule minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations.

In addition, the state board of health shall establish by legislative rule, as set out in chapter twenty-nine-a of this code, requirements covering the production and distribution of bottled drinking water and may by legislative rule, as set out in chapter twenty-nine-a of this code, establish requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water.

Authorized representatives of the state board of health shall have right of entry to any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspection, sampling or testing, and shall be furnished records or information reasonably required for a complete inspection.

Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corpora-
tion, institution, department, division, bureau, agency,
federal agency, or any entity recognized by law who
shall violate any provision of this section, or any of the
regulations or orders issued pursuant thereto, shall be
guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than twenty-five dollars nor more
than two hundred dollars, and each day's violation shall
constitute a separate offense. In addition thereto, the
state board of health or the state director of health, or
his authorized representative may seek injunctive relief
in the circuit court of the county in which all or part
of the public water system is situated for threatened or
continuing violations. For a willful violation of this
section, or of any of the regulations or orders issued
thereunder, an individual, partnership, association,
syndicate, company, firm, trust, corporation, govern-
ment corporation, institution, department, division,
bureau, agency, federal agency, or entity recognized by
law, upon a finding thereof by the circuit court of the
county in which the violation occurs, shall be subject to
a civil penalty of not more than five thousand dollars,
and each day's violation shall be grounds for a separate
penalty.

All regulations authorized under this section shall be
promulgated by legislative rules in accordance with the
provisions of article three, chapter twenty-nine-a of this
code.

CHAPTER 60

(Com. Sub. for S. B. 295—By Senators Tonkovich, Mr. President, and Boettner)

[Passed March 12, 1987: in effect ninety days from passage. Approved by the Governor.]
of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 51. HOSPICE LICENSURE ACT.

§16-51-5. State board of health to establish rules and regulations.

1 The state board of health, after soliciting the advice and recommendations of the West Virginia continuum of care board, shall promulgate reasonable rules and regulations for the licensure of hospice programs as it finds necessary in order to ensure adequate care, treatment, health, safety, welfare and comfort of hospice patients.

Such regulations shall provide that for purposes of hospice services, including medicare reimbursement for such services, where there has been no adjudication of incompetence of a terminally ill patient and where there is no durable power of attorney for such patient but where such patient is unable to execute an election for hospice services due to physical or mental incapacity as documented in such patient's health care records by two physicians licensed to practice medicine and surgery in this state, the following persons shall be deemed the patient's representative, and authorized to consent to hospice services for such patient, and in the order of priority set forth below:

1 (1) The patient's spouse;
2 (2) An adult child of the patient;
3 (3) A parent of the patient;
4 (4) An adult sibling of the patient;
5 (5) The nearest living relative of the patient:

Provided, That there is no reason to believe that hospice services are contrary to the terminally ill patient's religious beliefs and no actual notice of opposition by a member of the same or a prior class.

These rules and regulations shall also include, but not be limited to:
(a) The qualifications and supervision of licensed and nonlicensed personnel;

(b) The provision and coordination of inpatient care and in-home treatment services, including the development of a written plan of care;

(c) The management, operation, staffing and equipping of the hospice program;

(d) The clinical and business records kept by the hospice;

(e) The procedures for the review of utilization and quality of patient care; and

(f) Such other requirements as the board of health determines to be appropriate.

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CHAPTER 61

(Com. Sub. for H. B. 2342—By Delegate Knight)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]
council; regional health advisory councils; temporary moratorium on construction of long-term care beds; rate-setting powers; automatic approval of rate increases under certain circumstances; procedure for obtaining adjustments and revisions of rate schedules; permitting immediate implementation of temporary rate change in certain cases; and termination date.

Be it enacted by the Legislature of West Virginia:

That section six, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, four, five and seven, article two-d be amended and reenacted; that article two-d be further amended by adding thereto a new section, designated section five-a; that sections eleven, nineteen, twenty, twenty-one and twenty-eight, article twenty-nine-b, all of said chapter sixteen, be amended and reenacted, all to read as follows:

Article.

2D. Certificate of Need.

29B. West Virginia Health Care Cost Review Authority.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

§16-2D-4. Exemptions from certificate of need program.

§16-2D-5. Powers and duties of state health planning and development agency.

§16-2D-5a. Health care planning council; state health plan; regional health advisory councils.

§16-2D-7. Procedures for certificate of need review.

§16-2D-2. Definitions.

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

3 (a) “Affected person” means:

4 (1) The applicant;

5 (2) An agency or organization representing consumers;

7 (3) Any individual residing within the geographic area served or to be served by the applicant;

9 (4) Any individual who regularly uses the health care facilities within that geographic area;
(5) The health care facilities which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

(6) The health care facilities which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;

(7) Third party payers who reimburse health care facilities similar to those proposed for services;

(8) Any agency which establishes rates for health care facilities similar to those proposed; or

(9) Organizations representing health care providers.

(b) “Ambulatory health care facility” means a facility which is free-standing and not physically attached to a health care facility and which provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. This definition does not include the private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed.

(c) “Ambulatory surgical facility” means a facility which is free-standing and not physically attached to a health care facility and which provides surgical treatment to patients not requiring hospitalization. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed.
(d) "Applicant" means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located, and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the governing body or the person proposing to provide such new institutional health service. Incorporators or promoters who will not constitute the governing body or persons responsible for the new institutional health service may not be an applicant.

(e) "Bed capacity" means the number of beds for which a license is issued to a health care facility, or, if a facility is unlicensed, the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards.

(f) "Capital expenditure" means an expenditure:

(1) Made by or on behalf of a health care facility; and

(2) (A) Which (i) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and (B) which (i) exceeds the expenditure minimum, or (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made, or (iii) is a substantial change to the services of such facility. For purposes of part (i), subparagraph (B), subdivision (2) of this definition, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B), subdivision (2) of this definition is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would
be subject to review shall be considered capital expend-
ditures, and a transfer of equipment or facilities for less
than fair market value shall be considered a capital
expenditure for purposes of such subdivisions if a
transfer of the equipment or facilities at fair market
value would be subject to review. A series of expendi-
tures, each less than the expenditure minimum, which
when taken together are in excess of the expenditure
minimum, may be determined by the state agency to be
a single capital expenditure subject to review. In
making its determination, the state agency shall
consider: Whether the expenditures are for components
of a system which is required to accomplish a single
purpose; whether the expenditures are to be made over
a two-year period and are directed towards the accom-
plishment of a single goal within the health care facility's
long-range plan; or, whether the expenditures are to be
made within a two-year period within a single depart-
ment such that they will constitute a significant
modernization of the department.

(g) "Expenditure minimum" means one million
dollars for the twelve-month period beginning the first
day of October, one thousand nine hundred eighty-seven.
For each twelve-month period thereafter, the state
agency may, by regulations adopted pursuant to section
eight of this article, adjust the expenditure minimum to
reflect the impact of inflation.

(h) "Health," used as a term, includes physical and
mental health.

(i) "Health care facility" is defined as including
hospitals, skilled nursing facilities, kidney disease
treatment centers, including free-standing hemodialysis
units, intermediate care facilities, ambulatory health
care facilities, ambulatory surgical facilities, home
health agencies, rehabilitation facilities and health
maintenance organizations; community mental health
and mental retardation facilities, whether under public
or private ownership, or as a profit or nonprofit
organization and whether or not licensed or required to
be licensed in whole or in part by the state. For purposes
of this definition, "community mental health and mental
retardation facility” means a private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient and consultation and education for individuals with mental illness, mental retardation or drug or alcohol addiction.

(j) “Health care provider” means a person, partnership, corporation, facility or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual’s medical care, treatment or confinement.

(k) “Health maintenance organization” means a public or private organization, organized under the laws of this state, which:

(1) Is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act, as amended, Title 42 United States Code Section 300e-9(d); or

(2) (A) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services and out-of-area coverage; and

(B) Is compensated except for copayments for the provision of the basic health care services listed in subparagraph (2)(A), subdivision (m) of this definition to enrolled participants on a predetermined periodic rate basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent or kind of health service actually provided; and

(C) Provides physicians’ services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.
(l) “Health services” means clinically related preventive, diagnostic, treatment or rehabilitative services, including alcohol, drug abuse and mental health services.

(m) “Home health agency” is an organization primarily engaged in providing directly or through contract arrangements, professional nursing services, home health aide services, and other therapeutic and related services including, but not limited to, physical, speech and occupational therapy and nutritional and medical social services to persons in their place of residence on a part-time or intermittent basis.

(n) “Hospital” means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(o) “Intermediate care facility” means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition require health-related care and services above the level of room and board.

(p) “Long-range plan” means a document formally adopted by the legally constituted governing body of an existing health care facility or by a person proposing a new institutional health service. Each long-range plan shall consist of the information required by the state agency in regulations adopted pursuant to section eight of this article.

(q) “Major medical equipment” means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and which costs in excess of seven hundred fifty thousand dollars, except
that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven of Section 1861(s) of such act, Title 42 United States Code Sections 1395x (10) and (11). In determining whether medical equipment costs more than seven hundred fifty thousand dollars, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term “cost” includes the fair market value.

(r) “Medically underserved population” means the population of an urban or rural area designated by the state agency as an area with a shortage of personal health services or a population having a shortage of such services, after taking into account unusual local conditions which are a barrier to accessibility or availability of such services. Such designation shall be in regulations adopted by the state agency pursuant to section eight of this article, and the population so designated may include the state’s medically underserved population designated by the Federal Secretary of Health and Human Services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 United States Code Section 254(b)(3).

(s) “New institutional health service” means such service as described in section three of this article.

(t) “Offer” when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(u) “Person” means an individual, trust, estate, partnership, committee, corporation, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision
or instrumentality thereof or any legal entity recognized
by the state.

(v) "Physician" means a doctor of medicine or osteo-
pathy legally authorized to practice medicine and
surgery by the state.

(w) "Proposed new institutional health service" means
such service as described in section three of this article.

(x) "Psychiatric hospital" means an institution which
primarily provides to inpatients, by or under the
supervision of a physician, specialized services for the
diagnosis, treatment and rehabilitation of mentally ill
and emotionally disturbed persons.

(y) "Rehabilitation facility" means an inpatient
facility which is operated for the primary purpose of
assisting in the rehabilitation of disabled persons
through an integrated program of medical and other
services which are provided under competent profes-
sional supervision.

(z) "Review agency" means an agency of the state,
designated by the governor as the agency for the review
of state agency decisions.

(aa) "Skilled nursing facility" means an institution or
a distinct part of an institution which is primarily
engaged in providing to inpatients skilled nursing care
and related services for patients who require medical or
nursing care, or rehabilitation services for the rehabil-
itation of injured, disabled or sick persons.

(bb) "State agency" means the health care cost review
authority created, established, and continued pursuant
to article twenty-nine-b of this chapter.

(cc) "State health plan" means the document approved
by the governor after preparation by the former
statewide health coordinating council, or that document
as approved by the governor after amendment by the
health care planning council.

(dd) "Health care planning council" means the body
established by section five-a of this article to participate
in the preparation and amendment of the state health
plan and to advise the state agency.
(ee) "Substantial change to the bed capacity" of a health care facility means a change, with which a capital expenditure is associated, in any two-year period of ten or more beds or more than ten percent, whichever is less, of the bed capacity of such facility that increases or decreases the bed capacity, or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds as swing beds between acute care and long-term care categories. A series of changes to the bed capacity of a health care facility in any two-year period, each less than ten beds or ten percent of the bed capacity of such facility, but which when taken together comprise ten or more beds or more than ten percent of the bed capacity of such facility, whichever is less, is a substantial change to the bed capacity.

(ff) "Substantial change to the health services" of a health care facility means the addition of a health service which is offered by or on behalf of the health care facility and which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is first offered, or the termination of a health service which was offered by or on behalf of the facility, but does not include the providing of hospice care, ambulance service, wellness centers or programs, adult day care, or respite care by acute care facilities.

(gg) "To develop," when used in connection with health services, means to undertake those activities which upon their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, in relation to the offering of such a service.

§16-2D-4. Exemptions from certificate of need program.

(a) Except as provided in subdivision (h), section three of this article, nothing in this article or the rules and regulations adopted pursuant to the provisions of this article may be construed to authorize the licensure, supervision, regulation or control in any manner of: (1)
Private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed; (2) dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees: Provided, however, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours; (3) establishments, such as motels, hotels and boardinghouses, which provide medical, nursing personnel and health related services; and (4) the remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

(b) (1) A certificate of need is not required for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provisions of an inpatient institutional health service, if with respect to such offering, acquisition or obligation, the state agency has, upon application under subdivision (2), subsection (b) of this section, granted an exemption to:

(A) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the institutional
health service will be individuals enrolled with such organization or organizations in the combination;

(B) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination; or

(C) A health care facility, or portion thereof, if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and on the date the application is submitted under subdivision (2), subsection (b) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the new institutional health service will be individuals enrolled with such organization.

(2) (A) A health maintenance organization, combination of health maintenance organizations, or other health care facility is not exempt under subdivision (1), subsection (b) of this section from obtaining a certificate of need unless:

(i) It has submitted, at such time and in such form and manner as the state agency shall prescribe, an application for such exemption to the state agency;

(ii) The application contains such information respect-
(iii) The state agency approves such application.

(B) The state agency shall approve an application submitted under subparagraph (A), subdivision (2), subsection (b) of this section, if it determines that the applicable requirements of subdivision (1), subsection (b) of this section, are met or will be met on the date the proposed activity for which an exemption was requested will be undertaken.

(3) A health care facility, or any part thereof, or medical equipment with respect to which an exemption was granted under subdivision (1), subsection (b) of this section, may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired and a health care facility described in subparagraph (C), subdivision (1), subsection (b) of this section, which was granted an exemption under subdivision (1), subsection (b) of this section, may not be used by any person other than the lessee described in subparagraph (C), subdivision (1), subsection (b) of this section, unless:

(A) The state agency issues a certificate of need approving the sale, lease, acquisition or use; or

(B) The state agency determines, upon application, that the entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling interest in or to use the facility is:

(i) A health maintenance organization or a combination of health maintenance organizations which meets the enrollment requirements of part (i), subparagraph (A), subdivision (1), subsection (b) of this section, and with respect to such facility or equipment, the entity meets the accessibility and patient enrollment requirements of parts (ii) and (iii), subparagraph (A), subdivision (1), subsection (b) of this section; or
(ii) A health care facility which meets the inpatient, enrollment and accessibility requirements of parts (i), (ii) and (iii), subparagraph (B), subdivision (1), subsection (b) of this section and with respect to its patients meets the enrollment requirements of part (iv), subparagraph (B), subdivision (1), subsection (b) of this section.

(4) In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the certificate of need requirements apply only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services and then only to the extent that such offering, acquisition or obligation is not exempt under subdivision (1), subsection (b) of this section.

(5) The state agency shall establish the period within which approval or disapproval by the state agency of applications for exemptions under subdivision (1), subsection (b) of this section, shall be made.

(c) (1) A health care facility is not required to obtain a certificate of need for the acquisition of major medical equipment to be used solely for research, the addition of health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research if the health care facility provides the notice required in subdivision (2), subsection (c) of this section, and the state agency does not find, within sixty days after it receives such notice, that the acquisition, offering or obligation will, or will have the effect to:

(A) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

(B) Result in a substantial change to the bed capacity of the facility; or
(C) Result in a substantial change to the health services of the facility.

(2) Before a health care facility acquires major medical equipment to be used solely for research, offers a health service solely for research, or obligates a capital expenditure solely for research, such health care facility shall notify in writing the state agency of such facility's intent and the use to be made of such medical equipment, health service or capital expenditure.

(3) If major medical equipment is acquired, a health service is offered, or a capital expenditure is obligated and a certificate of need is not required for such acquisition, offering or obligation as provided in subdivision (1), subsection (c) of this section, such equipment or service or equipment or facilities acquired through the obligation of such capital expenditure may not be used in such a manner as to have the effect or to make a change described in subparagraphs (A), (B) and (C), subdivision (1), subsection (c) of this section unless the state agency issues a certificate of need approving such use.

(4) For purposes of this subsection, the term “solely for research” includes patient care provided on an occasional and irregular basis and not as part of a research program.

(d) (1) The state agency may adopt regulations pursuant to section eight of this article to specify the circumstances under which a certificate of need may not be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility: Provided, That a certificate of need shall be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility if:

(A) The notice required by subdivision (2), subsection (d) of this section is not filed in accordance with that subdivision with respect to such acquisition; or (B) the
state agency finds, within thirty days after the date it receives a notice in accordance with subdivision (2), subsection (d) of this section, with respect to such acquisition, that the services or bed capacity of the facility will be changed by reason of said acquisition.

(2) Before any person enters into a contractual arrangement to acquire an existing health care facility, such person shall notify the state agency of his or her intent to acquire the facility and of the services to be offered in the facility and its bed capacity. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the facility with respect to which the notice is given. The notice shall contain all information the state agency requires in accordance with subsections (e) and (s), section seven of this article.

(e) The state agency shall adopt regulations, pursuant to section eight of this article, wherein criteria are established to exempt from review the addition of certain health services, not associated with a capital expenditure, that are projected to entail annual operating costs of less than the expenditure minimum for annual operating costs. For purposes of this subsection, "expenditure minimum for annual operating costs" means five hundred thousand dollars for the twelve-month period beginning the first day of October, one thousand nine hundred eighty-five, and for each twelve-month period thereafter, the state agency may, by regulations adopted pursuant to section eight of this article, adjust the expenditure minimum for annual operating costs to reflect the impact of inflation.

(f) The state agency may adopt regulations pursuant to section eight of this article to specify the circumstances under which and the procedures by which a certificate of need may not be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, major medical equipment which merely replaces medical equipment which is already owned by the health care facility and which has become outdated, worn-out or obsolete.
(g) The state agency may adopt regulations pursuant to section eight of this article to specify the circumstances under which and the procedures by which a certificate of need may not be required for the obligation of a capital expenditure in excess of the expenditure minimum for certain items not directly related to the provision of health services. The state agency shall specify the types of items in the regulations which may be so exempted from review.

(h) The state agency may adopt regulations pursuant to section eight of this article to specify the circumstances under which and the procedures by which a certificate of need may not be required for shared services between two or more acute care facilities providing services made available through new or existing technology that can reasonably be mobile. The state agency shall specify the types of items in the regulations which may be so exempted from review.

(i) Nothing in this article shall be construed to require the filing of a certificate of need application for any expenditure, health service, or change in health service which is exempt from review under this article. However, the state agency may promulgate rules and regulations pursuant to section eight of this article to require the filing of a notice with the state agency by a health care facility that proposes to make such an expenditure, initiate a health service, or effect a change in a health service for which the health care facility claims an exemption from review. The state agency shall, within ten days of a receipt of such notice, make one of the following responses:

(1) Accept the claim of exemption;

(2) Require the health care facility to furnish the state agency with additional information;

(3) Reject the claim of exemption; or

(4) Determine that a certificate of need application is necessary for a review of the proposed expenditure, new health service, or change in a health service in order to determine if the claim of exemption may be upheld:
Provided, That when a new health service is proposed to be developed, the state agency shall, within the ten days of receipt of the required notice, determine whether or not economic and geographic factors within the geographic area of the proposed addition to service are such that the proposed new health service will be offered in competition with other health care facilities providing the same or similar service. In the event that an affirmative determination is made on the issue of competition, then the state agency shall require a certificate of need application for the proposed new health service.

§16-2D-5. Powers and duties of state health planning and development agency.

(a) The state agency is hereby empowered to administer the certificate of need program as provided by this article.

(b) The state agency shall cooperate with the health care planning council in developing rules and regulations for the certificate of need program to the extent appropriate for the achievement of efficiency in their reviews and consistency in criteria for such reviews.

(c) The state agency may seek advice and assistance of other persons, organizations, and other state agencies in the performance of the state agency's responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of such services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance.
assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of such services.

(f) The state agency is hereby empowered to order a moratorium upon the processing of an application or applications for the acquisition of major medical equipment filed pursuant to section three of this article and considered by the agency to be new medical technology, when criteria and guidelines for evaluating the need for such new medical technology have not yet been adopted. Such moratoriums shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the new medical technology affected by the moratorium, or ninety days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and affected applications shall be processed pursuant to section six of this article.

(g) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request, or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved, or the amount of capital expenditure involved. The state agency shall implement this subsection by filing procedural rules pursuant to chapter twenty-nine-a of this code. The fees charged shall be deposited into a special fund known as the certificate of need program fund to be expended for the purposes of this article.

(h) No additional intermediate care facility/skilled nursing facility (ICF/SNF) nursing home beds shall be granted a certificate of need, except for applicants which have filed letters of intent or applications for certificates of need for such facilities prior to the fifteenth day of March, one thousand nine hundred eighty-seven, and except in the case of facilities designed to replace existing beds in unsafe or substandard existing facilities.
§16-2D-5a. Health care planning council; state health plan; regional health advisory councils.

(a) The department of health shall be responsible for coordinating and developing the health planning research efforts of the state and for all amendments, revisions and updates of the state health plan referred to herein.

(b) There is hereby created a fifteen member health care planning council, whose purpose is to give input and direction to the health care cost review authority and to the West Virginia department of health in the state health planning process and annual updates of the state health plan.

(c) The state health plan heretofore approved by the governor shall remain in effect until replaced or modified as follows: The department of health shall prepare a draft of all amendments to the state health plan and shall transmit the drafts to the council and to the state agency. The state agency may present amendments to the department of health proposal to the council for consideration. The council shall then hold public hearings on each amendment as prepared by the department of health. Following the public hearings, the council may amend the proposal and, if the proposed amendment is approved by a majority of the council, the council shall submit the proposed amendment to the governor for his approval.

(d) The state health plan shall describe those institutional health services which entail annual operating cost in excess of the expenditure minimum for annual operating costs which are needed to provide for the well-being of persons receiving care within the state. At a minimum, these shall include acute inpatient (including psychiatric inpatient, obstetrical inpatient, and neonatal inpatient), rehabilitation, and long-term care services. The state health plan shall also describe other health services needed to provide for the well-being of persons receiving care within the state, including, at a minimum, preventive, ambulatory, and home health servi—
ces and treatment for alcohol and drug abuse. The state health plan shall also describe the number and type of resources, including facilities, personnel, major medical equipment, and other resources required to meet the goal of the plan and shall state the extent to which existing health care facilities are in need of modernization, conversion to other uses, or closure and the extent to which new health care facilities need to be constructed or acquired. Finally, the state health plan shall contain a detailed statement of goals.

(e) The health care planning council shall be composed of the director of the West Virginia department of health, the commissioner of the West Virginia department of human services, the commissioner of insurance, the chairman of the public employees insurance board, the chairman of the West Virginia health care cost review authority, and the executive director of the commission on aging by virtue of their appointive office; five public members, who shall consist of one representative of senior citizens, one representative of labor, one representative of business, one representative of the health insurance industry, one representative from regional health advisory councils who shall be nominated by the regional health advisory councils; and four representatives of the health care industry, one of whom shall represent physicians, one of whom shall represent registered nurses, one of whom shall represent the long term care industry, and one of whom shall represent hospitals. The members shall be appointed by the governor with the advice and consent of the senate. Appointment of members of the health care planning council shall be made with due diligence to ensure membership thereon by persons representing cultural, demographic and ethnic segments of the population of this state. Lay and professional members of the health care planning council shall be appointed for terms of three years each, except that of those first appointed, three members shall be appointed for terms of one year, three members for terms of two years and three members for terms of three years, and each shall be eligible for reappointment to a subsequent three-year term. Vacancies shall be filled in the same manner as
the original appointments for the duration of the unexpired term.

(f) The presence of a majority of the members of the health care planning council shall constitute a quorum for the transaction of business. The health care planning council shall elect a chairman, vice chairman, and such other officers as it shall deem necessary who shall serve at the will and pleasure of the members. The health care planning council shall meet no less than four times during the calendar year, and additional meetings shall be held upon call of the chairman or a majority of the members.

(g) The health care planning council members shall be reimbursed for expenses necessary to carry out their responsibilities and for reasonable travel expenses to attend health care planning council meetings.

(h) The health care cost review authority shall transmit to the department of health such data, records, reports, analyses and summaries filed, collected and developed by the authority as are necessary to health planning functions or related to health planning activities.

(i) In recognition of the importance of local community involvement in health planning and development efforts, each planning and development council region of the state shall have a regional health advisory council which shall meet at least quarterly and shall review health care needs and organize public hearings on the health care issues within the region. Regional health advisory councils shall regularly report to the health care planning council regarding recommendations on health care needs and concerns in their respective regions. Regional health advisory councils shall be provided sufficient staff by the department of health to carry out their responsibility under this article. The department of health shall arrange for an annual meeting of the regional health advisory councils for purposes of exchanging information, continuing education and electing a regional health advisory council representative to serve on the health care planning
council. Each regional health advisory council shall consist of members from each county within the region, which members shall be appointed by the respective county commissions. One representative appointed from each county shall be actively involved in health care delivery in the county which such member is appointed, and two representatives from each county within the region shall have no direct affiliation with any health care provider and shall be consumers of health care services. No more than two members appointed from each county may be from the same political party. The presence of a majority of members at regional health advisory council meetings shall constitute a quorum for purposes of transacting business.

(j) The council shall make its own report to the state agency, the governor and the Legislature within thirty days of the close of each fiscal year. This report shall include summaries of all meetings of the council and any public comments on decisions, together with any suggestions and policy recommendations. In addition, the council shall make a study of the impact of the moratorium imposed by subsection (h), section five of this article as to its effects on the long-term care availability and accessibility and report to the Legislature on or before the first day of January, one thousand nine hundred eighty-eight.

(k) In the event that the health planning function established by this section is not funded through the general revenue fund, the state agency will provide, on an annual basis, through interagency transfer to the department of health the sum of two hundred thousand dollars for health planning programs described herein.

(l) The department of health shall promulgate rules and regulations in accordance with chapter twenty-nine-a to further implement the provisions of this section.

§16-2D-7. Procedures for certificate of need reviews.

(a) Prior to submission of an application for a certificate of need, the state agency shall require the submission of long-range plans by health care facilities with respect to the development of proposals subject to
review under this article. The plans shall be in such form and contain such information as the state agency shall require.

(b) An application for a certificate of need shall be submitted to the state agency prior to the offering or development of all new institutional services within this state. Persons proposing new institutional health services shall submit letters of intent not less than fifteen days prior to submitting an application. The letters of intent shall be of such detail as specified by the state agency.

(c) The state agency may adopt regulations pursuant to section eight of this article for:

(1) Provision for applications to be submitted in accordance with a timetable established by the state agency;

(2) Provision for such reviews to be undertaken in a timely fashion; and

(3) Except for proposed new institutional health services which meet the requirements for consideration under subsection (g), section nine of this article with regard to the elimination or prevention of certain imminent safety hazards or to comply with certain licensure or accreditation standards, provision for all completed applications pertaining to similar types of services, facilities or equipment to be considered in relation to each other, at least three times a year.

(d) An application for a certificate of need shall specify the time the applicant will require to make such service or equipment available or to obligate such expenditure and a timetable for making such service or equipment available or obligating such expenditure.

(e) The application shall be in such form and contain such information as the state agency shall establish by rule or regulation, but requests for information shall be limited to only that information which is necessary for the state agency to perform the review.

(f) Within fifteen days of receipt of application, the
state agency shall determine if the application is complete. The state agency may request additional information from the applicant.

(g) The state agency shall provide timely written notice to the applicant and to all affected persons of the beginning of the review, and to any person who has asked the state agency to place the person’s name on a mailing list maintained by the state agency. Notification shall include the proposed schedule for review, the period within which a public hearing during the course of the review may be requested by affected persons, which period may not be less than thirty days from the date of the written notification of the beginning of the review required by this section, and the manner in which notification will be provided of the time and place of any public hearing so requested. For the purposes of this subsection, the date of notification is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later.

(h) Written notification to members of the public and third-party payers may be provided through newspapers of general circulation in the applicable health service area and public information channels; notification to all other affected persons shall be by mail which may be as part of a newsletter.

(i) If, after a review has begun, the state agency requires the person subject to the review to submit additional information respecting the subject of the review, such person shall be provided at least fifteen days to submit the information and the state agency shall, at the request of such person, extend the review period by fifteen days. This extension applies to all other applications which have been considered in relation to the application for which additional information is required.

(j) The state agency shall adopt schedules for reviews which provide that no review may, to the extent practicable, take longer than ninety days from the date that notification, as described under subsection (g) of
this section, is sent to the applicant to the date of the
final decision of the state agency, and in the case of
expedited applications, may by regulations adopted
pursuant to section eight of this article provide for a
shortened review period.

(k) The state agency shall adopt criteria for determin-
ing when it would not be practicable to complete a
review within ninety days.

(l) The state agency shall provide a public hearing in
the course of agency review if requested by any affected
person and the state agency may on its own initiate such
a public hearing.

(1) The state agency shall, prior to such hearing,
provide notice of such hearing and shall conduct such
hearing in accordance with administrative hearing
requirements in article five, chapter twenty-nine-a of
this code, and its procedure adopted pursuant to this
section.

(2) In a hearing any person has the right to be
represented by counsel and to present oral or written
arguments and evidence relevant to the matter which
is the subject of the hearing. Any person affected by the
matter which is the subject of the hearing may conduct
reasonable questioning of persons who make factual
allegations relevant to such matter.

(3) The state agency shall maintain a verbatim record
of the hearing.

(4) After the commencement of a hearing on the
applicant's application and before a decision is made
with respect to it, there may be no ex parte contacts
between (a) the applicant for the certificate of need, any
person acting on behalf of the applicant or holder of a
certificate of need, or any person opposed to the issuance
of a certificate for the applicant and (b) any person in
the state agency who exercises any responsibility
respecting the application.

(5) The state agency may not impose fees for such a
public hearing.
(m) If a public hearing is not conducted during the review of a new institutional health service, the state agency may, by regulations adopted pursuant to section eight of this article, provide for a file closing date during the review period after which date no other factual information or evidence may be considered in the determination of the application for the certificate of need. A detailed itemization of documents in the state agency file on a proposed new institutional health service shall, on request, be made available by the state agency at any time before the file closing date.

(n) The extent of additional information received by the state agency from the applicant for a certificate of need after a review has begun on the applicant’s proposed new institutional health service, with respect to the impact on such new institutional health service and additional information which is received by the state agency from the applicant, may be cause for the state agency to determine the application to be a new proposal, subject to a new review cycle.

(o) The state agency shall in timely fashion notify, upon request, providers of health services and other persons subject to review under this article of the status of the state agency review of new institutional health services subject to review, findings made in the course of such review, and other appropriate information respecting such review.

(p) The state agency shall prepare and publish, at least annually, reports of reviews completed and being conducted, with general statements about the status of each review still in progress and the findings and rationale for each completed review since the publication of the last report.

(q) The state agency shall provide for access by the general public to all applications reviewed by the state agency and to all other pertinent written materials essential to agency review.

(r) (1) Any person may request in writing a public hearing for purposes of reconsideration of a state agency decision. No fees may be imposed by the state agency
for the hearing. For purposes of this section, a request for a public hearing for purposes of reconsideration shall be deemed to have shown good cause if, in a detailed statement, it:

(A) Presents significant, relevant information not previously considered by the state agency, and demonstrates that with reasonable diligence the information could not have been presented before the state agency made its decision;

(B) Demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;

(C) Demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision; or

(D) Provides such other bases for a public hearing as the state agency determines constitutes good cause.

(2) To be effective, a request for such a hearing shall be received within thirty days after the date upon which all parties received notice of the state agency decision, and the hearing shall commence within thirty days of receipt of the request.

(3) Notification of such public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing, the person proposing the new institutional health service, and shall be sent to others upon request.

(4) The state agency shall hold public reconsideration hearings in accordance with the provisions for administrative hearings contained in:

(A) Its adopted procedures;

(B) Ex parte contact provisions of subdivision (4), subsection (1) of this section; and

(C) The administrative procedures for contested cases contained in article five, chapter twenty-nine-a of this code.

(5) The state agency shall make written findings which state the basis for its decision within forty-five days after the conclusion of such hearing.
(6) A decision of the state agency following a reconsideration hearing shall be considered a decision of the state agency for purposes of sections nine and ten of this article and for purposes of the notification of the status of review, findings and annual report provisions of subsections (o) and (p) of this section.

(s) The state agency may adopt regulations pursuant to section eight of this article for reviews and such regulations may vary according to the purpose for which a particular review is being conducted or the type of health services being reviewed.

(t) Notwithstanding other provisions of this article, the state agency shall adopt rules and regulations for determining when there is an application which warrants expedited review. If procedures adopted by the state agency to handle expedited applications do not conform to the provisions of this article, such procedures shall be approved by the federal secretary of health and human services and shall be adopted as regulations pursuant to section eight of this article.

ARTICLE 29B. WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY.

§16-29B-11. Certificate of need program.

§16-29B-19. Rate-setting powers generally.

§16-29B-20. Rate determination.

§16-29B-21. Procedure for obtaining initial rate schedule; adjustments and revisions of rate schedules.

§16-29B-28. Termination date.

§16-29B-11. Certificate of need program.

1 The board shall carry out and perform all functions set forth in article two-d of this chapter, including review and approval or disapproval of capital expenditures for health care facilities or services. In making decisions in the certificate of need review process, the board shall be guided by the state health plan approved by the governor.

§16-29B-19. Rate-setting powers generally.

1 (a) The board shall have power: (1) To initiate reviews and investigations of hospital rates and establish and
approve such rates; (2) to initiate reviews and investigations of hospital rates for specific services and the component factors which determine such rates; (3) to initiate reviews and investigations of hospital budgets and the specific components of such budgets; and (4) to approve or disapprove hospital rates and budgets taking into consideration the criteria set forth in section twenty of this article.

(b) In the interest of promoting the most efficient and effective use of hospital service, the board may adopt and approve alternative methods of rate determination. The board may also adopt methods of charges and payments of an experimental nature which are in the public interest and consistent with the purpose of this article.

§16-29B-20. Rate determination.

(a) Upon commencement of review activities, no rates may be approved by the board nor payment be made for services provided by hospitals under the jurisdiction of the board by any purchaser or third-party payor to or on behalf of any purchaser or class of purchasers unless:

(1) The costs of the hospital's services are reasonably related to the services provided and the rates are reasonably related to the costs;

(2) The rates are equitably established among all purchasers or classes of purchasers within a hospital without discrimination unless federal or state statutes or regulations conflict with this requirement. Equity among classes of purchasers may be achieved by considering demonstrated differences in the financial requirements of hospitals resulting from service, coverage and payment characteristics of a class of purchasers. The provision for differentials in rates among classes of purchasers should be carried out in the context of each hospital's total financial requirements for the efficient provision of necessary services. The board shall institute a study of objective methods of computing the percentage differential to be utilized for all hospitals in determining appropriate projected gross
revenues under subsection (b) of this section. Such study shall include a review and determination of the relevant and justifiable economic factors which can be considered in setting such differential. The differential shall be allowed for only those activities and programs which result in quantifiable savings to the hospital with respect to patient care costs, bad debts, free care or working capital, or reductions in the payments of other payors. Each component utilized in determining the differential shall be individually quantified so that the differential shall equal the value assigned to each component. The board shall consider such matters as coverage to individual subscribers, the elderly and small groups, payment practices, savings in hospital administrative costs, cost containment programs and working capital. The study shall also provide for a method of annual recomputation of the differential and triennial recomputation of all other components. The board may contract with any person or entity to assist the board in the discharge of its duties as herein stated. Whoever obstructs any person or entity conducting a study authorized under the provisions of this section shall be deemed to be in violation of this article and shall be subject to any appropriate actions, including injunctive relief, as may be necessary for the enforcement of this section;

(3) The rates of payment for medicaid are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated hospitals subject to the provisions of this article. The rates shall take into account the situation of hospitals which serve disproportionate numbers of low income patients and assure that individuals eligible for medicaid have reasonable access, taking into account geographic location and reasonable travel time, to inpatient hospital services of adequate quality;

(4) The rates are equitable in comparison to prevailing rates for similar services in similar hospitals as determined by the board;

(5) In no event shall a hospital's receipt of emergency disaster funds from the federal government be included
in such hospital's gross revenues for either rate-setting or assessment purposes.

(b) In the interest of promoting efficient and appropriate utilization of hospital services the board shall review and make findings on the appropriateness of projected gross revenues for a hospital as such revenues relate to charges for services and anticipated incidence of service. The board shall further render a decision as to the amount of net revenue over expenditures that is appropriate for the effective operation of the hospital.

(c) When applying the criteria set forth above, the board shall consider all relevant factors including, but not limited to, the following: The economic factors in the hospital's area; the hospital's efforts to share services; the hospital's efforts to employ less costly alternatives for delivering substantially similar services or producing substantially similar or better results in terms of the health status of those served; the efficiency of the hospital as to cost and delivery of health care; the quality of care; occupancy level; a fair return on invested capital, not otherwise compensated for; whether the hospital is operated for profit or not for profit; costs of education; and, income from any investments and assets not associated with patient care, including, but not limited to, parking garages, residences, office buildings, and income from foundations and restricted funds whether or not so associated.

(d) Wages, salaries and benefits paid to or on behalf of nonsupervisory employees of hospitals subject to this article shall not be subject to review unless the board first determines that such wages, salaries and benefits may be unreasonably or uncustomarily high or low. Said exemption does not apply to accounting and reporting requirements contained in this article, nor to any that may be established by the board. "Nonsupervisory personnel," for the purposes of this section, means, but is not limited to, employees of hospitals subject to the provisions of this article who are paid on an hourly basis.

(e) Reimbursement of capital and operating costs for
new services and capital projects subject to article two-
d of this chapter shall not be allowed by the board if
such costs were incurred subsequent to the eighth day
of July, one thousand nine hundred seventy-seven, unless
they were exempt from review or approved by the state
health planning and development agency prior to the
first day of July, one thousand nine hundred eighty-four,
pursuant to the provisions of article two-d of this
chapter.

(f) The board shall consult with relevant licensing
agencies and may require them to provide written
findings with regard to their statutory functions and
information obtained by them in the pursuit of those
functions. Any licensing agency empowered to suggest
or mandate changes in buildings or operations of
hospitals shall give notice to the board together with any
findings.

(g) Rates shall be set by the board in advance of the
year during which they apply except for the procedure
set forth in subsection (c), section twenty-one of this
article and shall not be adjusted for costs actually
incurred.

(h) All determinations, orders and decisions of the
board with respect to rates and revenues shall be
prospective in nature.

(i) No hospital may charge for services at rates in
excess of those established in accordance with the
requirements of and procedures set forth in this article.

(j) Notwithstanding any other provision of this article,
the board shall approve all requests for rate increases
by hospitals where the rate of increase in the hospital’s
gross inpatient revenues per discharge for nonmedicare
and nonmedicaid payors is equal to or less than the rate
of inflation for the hospital industry nationally as
measured by the most recent hospital market basket
component of the consumer price index as reported by
the United States bureau of labor statistics applicable
to the hospital’s fiscal year. The board may, by regula-
tion, impose reporting requirements to ensure that a
hospital does not exceed the rate of increases permitted
herein.
§16-29B-21. Procedure for obtaining initial rate schedule; adjustments and revisions of rate schedules.

(a) No hospital subject to this article may change or amend its schedule of rates except in accordance with the following procedures:

(1) Any request for a change in rate schedules or other changes must be filed in writing to the board with such supporting data as the hospital seeking to change its rates considers appropriate, in the form prescribed by the board. Upon receipt of notice, the board, if it considers necessary, may hold a public hearing on the proposed change. Such hearing shall be held no later than forty-five days after receipt of the notice. The review of the proposed change may not exceed an overall period of one hundred eighty days from the date of filing to the date of the board’s order. If the board fails to complete its review of the proposed change within the time period specified for the review, the proposed change shall be deemed to have been approved by the board. Any proposed change shall go into effect upon the date specified in the order;

(2) Each hospital shall establish, in a written report which shall be incorporated into each proposed rate application, that it has thoroughly investigated and considered:

(A) The economic and social impact of any proposed rate increase, or service decrease, on hospital cost containment and upon health care purchasers, including classes of purchasers, such as the elderly and low and fixed income persons;

(B) State-of-the-art advances in health care cost containment, hospital management and rate design, as alternatives to or in mitigation of any rate increase, or service decrease, which report shall describe the state-of-the-art advances considered and shall contain specific findings as to each consideration, including the reasons for adoption or rejection of each;
(C) Implementation of cost control systems, including the elimination of unnecessary or duplicative facilities and services, promotion of alternative forms of care, and other cost control mechanisms;

(D) Initiatives to create alternative delivery systems;

(E) Efforts to encourage third-party payors, including, but not limited to, insurers, health service, care and maintenance organizations, to control costs, including a combination of education, persuasion, financial incentives and disincentives to control costs;

(3) In the event the board modifies the request of a hospital for a change in its rates so that the hospital obtains only a partial increase in its rate schedule, the hospital shall have the right to accept the benefits of the partial increase in rates and charge its purchasers accordingly without in any way adversely affecting or waiving its right to appeal that portion of the decision and order of the board which denied the remainder of the requested rate increase.

(b) The board shall allow a temporary change in a hospital's rates which may be effective immediately upon filing and in advance of review procedures when a hospital files a verified claim that such temporary rate changes are in the public interest, and are necessary to prevent insolvency, to maintain accreditation or for emergency repairs or to relieve undue financial hardship. The verified claim shall state the facts supporting the hospital's position, the amount of increase in rates required to alleviate the situation, and shall summarize the overall effect of the rate increase. The claim shall be verified by either the chairman of the hospital's governing body or by the chief executive officer of the hospital.

(c) Following receipt of the verified claim for temporary relief, the board shall review the claim through its usual procedures and standards; however, this power of review does not affect the hospital's ability to place the temporary rate increase into effect immediately. The review of the hospital's claim shall be for a permanent
rate increase and the board may include such other
factual information in the review as may be necessary
for a permanent rate increase review. As a result of its
findings from the permanent review, the board may
allow the temporary rate increase to become permanent,
to deny any increase at all, to allow a lesser increase,
or to allow a greater increase.

(d) When any change affecting an increase in rates
goes into effect before a final order is entered in the
proceedings, for whatever reasons, where it deems it
necessary and practicable, the board may order the
hospital to keep a detailed and accurate account of all
amounts received by reason of the increase in rates and
the purchasers and third-party payors from whom such
amounts were received. At the conclusion of any
hearing, appeal or other proceeding, the board may
order the hospital to refund with interest to each
affected purchaser and/or third-party payor any part of
the increase in rates that may be held to be excessive
or unreasonable. In the event a refund is not practicable,
the hospital shall, under appropriate terms and condi-
tions determined by the board, charge over and amor-
tize by means of a temporary decrease in rates whatever
income is realized from that portion of the increase in
rates which was subsequently held to be excessive or
unreasonable.

(e) The board, upon a determination that a hospital
has overcharged purchasers or charged purchasers at
rates not approved by the board or charged rates which
were subsequently held to be excessive or unreasonable,
may prescribe rebates to purchasers and third-party
payors in effect by the aggregate total of the overcharge.

(f) The board may open a proceeding against any
hospital at any time with regard to compliance with
rates approved and the efficiency and effectiveness of
the care being rendered in the hospital.

§16-29B-28. Termination date.

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 health care cost review authority
should be continued and reestablished. Accordingly,
notwithstanding the provisions of subsection seven,
section four, article ten, chapter four of this code, the
health care cost review authority shall continue to exist
until the first day of July, one thousand nine hundred
ninety-one.

CHAPTER 62
(H. B. 2207—By Delegates White and Leary)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article
twenty-nine-c, chapter sixteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to the extension of the legislative task
force on uncompensated health care and medicaid
expenditures.

Be it enacted by the Legislature of West Virginia:

That sections four 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-4. Legislative study; appointment of members; expenses; reports;
termination.

§16-29C-5. Effective date and termination date.

§16-29C-4. Legislative study; appointment of members;
expenses; reports; termination.

1 Not later than the first day of June, one thousand nine
2 hundred eighty-five, the president of the Senate and
3 speaker of the House of Delegates of the West Virginia
4 Legislature shall appoint a legislative task force on
5 uncompensated health care and medicaid expenditures
6 which shall meet, study and make recommendations as
7 herein provided.
The task force shall be composed of three members of the Senate appointed by the president from the membership of the Senate standing committee on health and human resources, three members of the House of Delegates appointed by the speaker from the membership of the House of Delegates standing committee on health and human resources, and a number of citizens appointed jointly by the president and speaker which, in their discretion, adequately provides for the appropriate representation of the interests of the providers of health care services, the providers of health care insurance, state departments involved in the administration of health care and health care related programs and the citizens of this state. Of the members of the Senate appointed by the president, not more than two shall be from the same political party. Of the members of the House of Delegates appointed by the speaker, not more than two shall be from the same political party.

Members originally appointed to the task force shall serve for terms beginning on the date of appointment and ending on the thirtieth day of June, one thousand nine hundred ninety, unless sooner replaced by the president or the speaker as applicable, or, in the discretion of the president and the speaker, unless the work of the task force is completed or the need for the task force no longer exists prior to that date. The task force shall cease to exist on the thirtieth day of June, one thousand nine hundred ninety.

The task force shall meet on such dates as may be approved by the joint committee on government and finance for the regular meetings of its subcommittees unless approval is first obtained from the joint committee on government and finance for additional meetings. The task force shall conduct studies on the amount of funds expended by hospitals and other health care providers of this state for services to persons who are unable to pay for those services and for which they receive no other form of reimbursement, the extent to which persons in this state forego needed medical services because of insufficient income and assets to pay for those services, the extent to which the state is
maximizing available federal programs and moneys in providing health care services to the citizens of this state, the operation of the programs and funds created by this article and the roles of the public, private and private nonprofit sectors in providing health care services to the citizens of this state. The task force shall also study the state medicaid program in order to determine if the state medicaid agency, as the payor of last resort, is expending maximum effort to identify alternate private insurance resources for medicaid beneficiaries and shall study the feasibility and financial impact upon the state of assuring increased access to medicaid beneficiaries to primary health care in the nonhospital setting by requiring enrollment in a primary care clinic program, if available, and of the establishment of different and lesser schedules of payment for primary health services delivered by a hospital emergency room as compared to the schedule of payments for emergency room services of a true medical emergency nature. The task force shall make such recommendations as it deems appropriate to address the needs identified in the studies.

The task force shall file an interim report with the joint committee on government and finance and the Legislature on the date of the last meeting of the joint committee on government and finance prior to commencement of the regular session of the Legislature in each year before the final report of the task force is filed with the joint committee on government and finance and the Legislature on or before the thirtieth day of June, one thousand nine hundred ninety.

The members of the task force shall be entitled to compensation at the rate authorized for members of the Legislature participating in legislative interim meetings and to reimbursement for reasonable and necessary expenses actually incurred in attending meetings of the task force, except that any employee of the state appointed to the task force is not entitled to such compensation. Funds necessary for the work of the task force shall be paid from joint appropriations to the Senate and House of Delegates but no such funds shall
be spent or obligations incurred in the conduct of such
work without prior approval of the joint committee on
government and finance.

§16-29C-5. Effective date and termination date.
1 This article shall be effective from passage, and,
2 notwithstanding the provisions of section four of this
3 article, shall terminate on the thirtieth day of June, one
4 thousand nine hundred ninety.

CHAPTER 63
(H. B. 2367—By Delegate Humphreys)
[Passed March 14, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-
three, chapter nineteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the pari-mutuel system of wagering on dog racing
generally; authorizing such system and establishing
limitations thereon; authorizing licensees to deduct
certain commissions; use of such commissions; providing
for the establishment of special funds by the racing
commission and prescribing the use thereof; increasing
commissions deducted by licensees on certain pari-
mutuel pools on dog racing; percentages of such
commissions to be paid to county or municipality or
state highway fund for the use of the department of
highways; reporting of revised commissions to be made
by dog racing licensees; requiring licensees to establish
special funds and prescribing the use thereof; retention
of breakage; access of auditors to certain records and to
location where pari-mutuel wagering conducted or
calculated; prohibitions; and mandating certain distri-
butions from commissions.

Be it enacted by the Legislature of West Virginia:
That section nine, article twenty-three, chapter nineteen of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be amended and reenacted to read as follows:
ARTICLE 23. HORSE AND DOG RACING.

PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED; COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

(a) The pari-mutuel system of wagering upon the results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized, if and only if such pari-mutuel wagering is conducted by such licensee within the confines of such licensee's horse racetrack or dog racetrack, and the provisions of section one, article ten, chapter sixty-one of this code, relating to gaming, shall not apply to the pari-mutuel system of wagering in manner and form as provided for in this article at any horse or dog race meeting within this state where horse or dog racing shall be permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of such licensee's racetrack at which any horse or dog race meeting is conducted or held.

(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools, as follows:

(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning horses, shall not exceed seventeen and one-fourth percent of the total of such pari-mutuel pools for the day. Out of such commission, as is mentioned in this subdivision, the licensee (i) shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article, (ii) shall make a deposit into a special fund to be established by
the licensee and to be used for the payment of regular
purses offered for thoroughbred racing by the licensee,
which deposits out of pari-mutuel pools for each day
during the months of January, February, March,
October, November and December shall be seven and
seventy-five one-thousandths percent of such pari-
mutuel pools, and which, out of pari-mutuel pools for
each day during all other months, shall be six and five
hundred seventy-five one-thousandths percent of such
pari-mutuel pools, (iii) shall, after allowance for the
exclusion given by subsection (b), section ten of this
article, make a deposit into a special fund to be
established by the racing commission and to be used for
the payment of breeders, awards and capital improve-
ments as authorized by section thirteen-b of this article,
which deposits out of pari-mutuel pools shall from the
effective date of this section and for fiscal year one
thousand nine hundred eighty-five, be four-tenths
percent; for fiscal year one thousand nine hundred
eighty-six, be seven-tenths percent; for fiscal year one
thousand nine hundred eighty-seven, be one percent; for
fiscal year one thousand nine hundred eighty-eight, be
one and one-half percent; and for fiscal year one
thousand nine hundred eighty-nine, and each year
thereafter, be two percent of such pools, and (iv) shall
pay one tenth of one percent of such pari-mutuel pools
into the general fund of the county commission of the
county in which the racetrack is located, except if within
a municipality, then to such municipal general fund.
The remainder of the commission shall be retained by
the licensee.

The commission deducted by any licensee from the
pari-mutuel pools on thoroughbred horse racing involv-
ing what is known as multiple betting in which the
winning pari-mutuel ticket or tickets are determined by
a combination of two winning horses shall not exceed
nineteen percent and by a combination of three or more
winning horses shall not exceed twenty-five percent of
the total of such pari-mutuel pools for the day. Out of
such commission, as is mentioned in this paragraph, the
licensee (i) shall pay the pari-mutuel pools tax provided
for in subsection (b), section ten of this article, (ii) shall
make a deposit into a special fund to be established by
the licensee and to be used for the payment of regular
purses offered for thoroughbred racing by the licensee,
which deposits out of pari-mutuel pools for each day
during the months of January, February, March,
October, November and December for pools involving a
combination of two winning horses shall be seven and
ninety-five one-hundredths percent and out of pari-
mutuel pools for each day during all other months shall
be seven and forty-five one-hundredths percent of such
pari-mutuel pools; and involving a combination of three
or more winning horses for the months of January,
February, March, October, November and December
the deposits out of such fund shall be ten and ninety-
five one-hundredths percent of such pari-mutuel pools;
and which, out of pari-mutuel pools for each day during
all other months, shall be ten and forty-five one-
hundredths percent of such pari-mutuel pools, (iii) shall,
after allowance for the exclusion given by subsection (b),
section ten of this article, make a deposit into a special
fund to be established by the racing commission and to
be used for the payment of breeders' awards and capital
improvements as authorized by section thirteen-b of this
article, which deposits out of pari-mutuel pools shall
from the effective date of this section and for fiscal year
one thousand nine hundred eighty-five, be four-tenths
percent; for fiscal year one thousand nine hundred
eighty-six, be seven-tenths percent; for fiscal year one
thousand nine hundred eighty-seven, be one percent; for
fiscal year one thousand nine hundred eighty-eight, be
one and one-half percent; and for fiscal year one
thousand nine hundred eighty-nine, and each year
thereafter, be two percent of such pools, and (iv) shall
pay one tenth of one percent of such pari-mutuel pools
into the general fund of the county commission of the
county in which the racetrack is located, except if within
a municipality, then to such municipal general fund.
The remainder of the commission shall be retained by
the licensee.

The deposits into special fund established by the
racing commission to be used for payments of breeders' awards and other expenses authorized by section
thirteen-b of this article shall be reduced by fifty percent in the event the average daily pari-mutuel pool for any calendar year is less than the average daily pari-mutuel pool for the calendar year ended the thirty-first day of December, one thousand nine hundred eighty-three, in amount equal to eleven percent of the average daily pari-mutuel pool for said calendar year ended the thirty-first day of December, one thousand nine hundred eighty-three. Of the amounts so reduced, fifty percent shall be paid into the special purse fund established in section nine-b of this article.

The commission deducted by the licensee under subdivision (1), subsection (b) of this section may be reduced only by mutual agreement between the licensee and a majority of the trainers and horse owners licensed by subsection (a), section two of this article or their designated representative. Such reduction in licensee commissions may be for a particular race, racing day or days or for a horse race meeting. Fifty percent of such reduction shall be retained by the licensee from the amounts required to be paid into the special fund established by the licensee under the provisions of subdivision (1), subsection (b) of this section. The racing commission shall promulgate such reasonable rules and regulations as are necessary to implement the foregoing provisions.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen and one-half percent of the total of such pari-mutuel pools for the day. Out of such commission the licensee shall pay the pari-mutuel pools tax provided for in subsection (c), section ten of this article, and shall pay one tenth of one percent into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The remainder of the commission shall be retained by the licensee.

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing, except from dog racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or
tickets are determined by a combination of two or more winning dogs, shall not exceed sixteen and thirty one-hundredths percent (16.30%) of the total of all pari-mutuel pools for the day. The commission deducted by any licensee from the pari-mutuel pools on dog racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning dogs shall not exceed nineteen percent (19%), by a combination of three winning dogs shall not exceed twenty-one percent (21%), and by a combination of four or more winning dogs shall not exceed twenty-three percent (23%) of the total of such pari-mutuel pools for the day. Out of such commissions, the licensee shall pay the pari-mutuel pools tax provided for in subsection (d), section ten of this article, and one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located. In addition, out of such commissions, if the racetrack is located within a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the general fund of the municipality; or, if the racetrack is located outside of a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the state road fund for use by the department of highways in accordance with the provisions of this subdivision (3). The remainder of the commission shall be retained by the licensee.

For the purposes of this section, "municipality" shall mean and include any Class I, Class II and Class III city and any Class IV town or village, incorporated as a municipal corporation under the laws of this state prior to the first day of January, one thousand nine hundred eighty-seven.

Each dog racing licensee, when required by the provisions of this subdivision (3) to pay a percentage of its commissions to the state road fund for use by the department of highways, shall transmit the required funds, in such manner and at such times as the racing commission shall by procedural rule direct, to the state treasurer for deposit in the state treasury to the credit
of the department of highways state road fund. All funds collected and received in the state road fund pursuant to the provisions of this subdivision shall be used by the department of highways in accordance with the provisions of article seventeen-a, chapter seventeen of this code for the acquisition of right-of-way for, the construction of, the reconstruction of and the improvement or repair of any interstate or other highway, secondary road, bridge and toll road in the state. If on the first day of July, one thousand nine hundred eighty-nine, any area encompassing a dog racetrack has incorporated as a Class I, Class II or Class III city or as a Class IV town or village, whereas such city, town or village was not incorporated as such on the first day of January, one thousand nine hundred eighty-seven, then on and after the first day of July, one thousand nine hundred eighty-nine, any balances in the state road fund existing as a result of payments made under the provisions of this subdivision may be used by the state road fund for any purpose for which other moneys in such fund may lawfully be used, and in lieu of further payments to the state road fund, the licensee of a racetrack which is located in such municipality shall thereafter pay three tenths of one percent of the pari-mutuel pools into the general fund of such municipality. If no such incorporation occurs before the first day of July, one thousand nine hundred eighty-nine, then payments to the state road fund shall thereafter continue as provided for under the provisions of this subdivision.

A dog racing licensee, before deducting the commissions authorized by this subdivision (3), shall give written notification to the racing commission not less than thirty days prior to any change in the percentage rates for such commissions. The racing commission shall prescribe blank forms for filing such notification. Such notification shall disclose the following: (1) The revised commissions to be deducted from the pari-mutuel pools each day on win, place and show betting and on different forms of multiple betting; (2) the dates to be included in such revised betting; (3) such other information as may be required by the racing commission.
The licensee shall establish a special fund to be used only for capital improvements or long-term debt amortization or both: Provided, That any licensee, heretofore licensed for a period of eight years prior to the effective date of the amendment made to this section during the regular session of the Legislature held in the year one thousand nine hundred eighty-seven, shall establish such special fund to be used only for capital improvements or physical plant maintenance, or both, at such licensee's licensed facility or at such licensee's commonly owned racing facility located within this state. Deposits made into such funds shall be in an amount equal to twenty-five percent of the increased rate total over and above the applicable rate in effect as of the first day of January, one thousand nine hundred eighty-seven, of the pari-mutuel pools for the day. Any amount deposited into such funds must be expended or liability therefor incurred within a period of two years from the date of deposit. Any funds not so expended shall forthwith be transferred into the state general fund after expiration of the two-year period.

The licensee shall make a deposit into a special fund established by the licensee and used for payment of regular purses offered for dog racing, which deposits out of the licensee's commissions for each day shall be three and seventy-five one-hundredths percent (3.75%) of the pari-mutuel pools.

The licensee shall further establish a special fund to be used exclusively for marketing and promotion programs; such funds shall be in an amount equal to five percent over and above the applicable rates in effect as of the first day of January, one thousand nine hundred eighty-seven, of the total pari-mutuel pools for the day.

Notwithstanding the provisions of subsection (d), section ten of this article, the amendments to this section by the acts of the Legislature, regular session, one thousand nine hundred eighty-seven, shall not reduce any pari-mutuel wagering tax paid by any dog racing licensee below the total dollar level paid by such licensee for and during the calendar year one thousand nine hundred eighty-six: Provided, That nothing herein shall
affect any increase in any such tax: Provided, however, that, if the number of annual dog racing meetings approved by the racing commission for any dog racing licensee is reduced below four hundred by the racing commission, or as a result of acts of God, including, but not limited to, flood, fire, wind damage, work stoppages or other events beyond the control of the licensee (but not including inclement weather), then any increase in the pari-mutuel wagering tax for any calendar year in excess of the total dollar level paid by such licensee for the calendar year one thousand nine hundred eighty-six, shall be reduced in like proportion.

The racing commission shall prepare and transmit annually to the governor and the Legislature a report of the activities of the racing commission under this subdivision (3). The report shall include a statement of: The amount of commissions retained by licensees; the amount of taxes paid to the state; the amounts paid to municipalities, counties and the department of highways dog racing fund; the amounts deposited by licensees into special funds for capital improvements or long-term debt amortization, and a certified statement of the financial condition of any licensee depositing into such fund; the amounts paid by licensees into special funds and used for regular purses offered for dog racing; the amounts paid by licensees into special funds and used for marketing and promotion programs; and such other information as the racing commission may deem appropriate for review.

The racing commission shall report to the governor, president of the Senate, speaker of the House, and the Legislature, on or before the thirty-first day of December, one thousand nine hundred ninety-three, on the effects of the amendments to this article by the acts of the Legislature, regular session, one thousand nine hundred eighty-seven, on dog racing licensees and pari-mutuel taxation for use by the Legislature in review of such amendments.

(c) In addition to any such commission, a licensee of horse race or dog race meetings shall also be entitled to retain the legitimate breakage, which shall be made
and calculated to the dime, and from such breakage, the licensee of a horse race meeting (excluding dog race meetings), shall deposit daily fifty percent of the total of such breakage retained by the licensee into the special fund created pursuant to the provisions of subdivision (1), subsection (b) of this section for the payment of regular purses.

(d) The director of audit, and any other auditors employed by the racing commission who shall also be certified public accountants or experienced public accountants, shall have free access to the space or enclosure where the pari-mutuel system of wagering is conducted or calculated at any horse or dog race meeting for the purpose of ascertaining whether or not the licensee is deducting and retaining only a commission as provided in this section and is otherwise complying with the provisions of this section. They shall also, for the same purposes only, have full and free access to all records and papers pertaining to such pari-mutuel system of wagering, and shall report to the racing commission in writing, under oath, whether or not the licensee has deducted and retained any commission in excess of that permitted under the provisions of this section or has otherwise failed to comply with the provisions of this section.

(e) No licensee shall permit or allow any individual under the age of eighteen years to wager at any horse or dog racetrack, knowing or having reason to believe that such individual is under the age of eighteen years.

(f) Notwithstanding the foregoing provisions of subdivision (1), subsection (b) of this section, to the contrary, a thoroughbred licensee qualifying for and paying the alternate reduced tax on pari-mutuel pools provided in section ten of this article shall distribute the commission authorized to be deducted by subdivision (1), subsection (b), section nine of this article as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) shall pay one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a
CHAPTER 64

(H. B. 2638—By Mr. Speaker, Mr. Chambers, and Delegate Swann, by request of the Executive)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, ten and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission, changing the definition of age; creating a direct appeal from commission orders to the supreme court of appeals; changing the procedure for enforcement of commission orders; and changing the time limit for filing a complaint.

Be it enacted by the Legislature of West Virginia:

That sections three, ten and eleven, article eleven, 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 11. HUMAN RIGHTS COMMISSION.

§5-11-3. Definitions.

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

§5-11-11. Appeal and enforcement of commission orders.

§5-11-3. Definitions.

1. When used in this article:

2. (a) The term "person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons;
(b) The term “commission” means the West Virginia human rights commission;

(c) The term “director” means the executive director of the commission;

(d) The term “employer” means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state: Provided, That such terms shall not be taken, understood or construed to include a private club;

(e) The term “employee” shall not include any individual employed by his parents, spouse or child, or in the domestic service of any person;

(f) The term “labor organization” includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment;

(g) The term “employment agency” includes any person undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency;

(h) The term “discriminate” or “discrimination” means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and includes to separate or segregate;

(i) The term “unlawful discriminatory practices” includes only those practices specified in section nine of this article;

(j) The term “place of public accommodations” means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but shall not include any accommodations which are in their nature private;
(k) The term "housing accommodations" means any building or portion thereof, which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this article shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms, or rooms to be rented;

(l) The term "real property" includes real estate, lands, leaseholds, commercial or industrial buildings and any vacant land offered for sale or rent on which the construction of a housing accommodation, commercial or industrial building is intended, and any land operated as a trailer camp or rented or leased for the use, parking or storage of mobile homes or house trailers;

(m) The term "real estate broker" includes any person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for prospective purchaser or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell
or exchange, or offer or attempt or agree to negotiate
the sale or exchange, of any such lot or parcel of real
estate. A newspaper engaged in the activity of adver-
tising in the normal course of its business shall not be
deemed to be a real estate broker;

(n) The term "real estate salesman" includes any
person who, for compensation, valuable consideration or
commission, or other thing of value, or by reason of a
promise or reasonable expectation thereof, is employed
by and operates under the supervision of a real estate
broker to sell, buy or offer to buy or negotiate the
purchase, sale or exchange of real estate, offers or
attempts to negotiate a loan secured or to be secured by
a mortgage or other encumbrance upon or transfer of
real estate for others, or to collect rents for the use of
real estate, or to solicit for prospective purchasers or
lessees of real estate, or who is employed by a licensed
real estate broker to sell or offer to sell lots or other
parcels of real estate, at a stated salary, or upon a
commission, or upon a salary and commission, or
otherwise to sell real estate, or any parts thereof, in lots
or other parcels;

(o) The term "purchaser" includes any occupant,
prospective occupant, lessee, prospective lessee, renter,
buyer or prospective buyer;

(p) The term "owner" shall include the owner, lessee,
sublessee, assignee, manager, agents, or other person,
firm or corporation having the right to sell, rent or lease
any housing accommodation or real property within the
state of West Virginia or any agent of any of these;

(q) The term "age" means the age of forty or above;

(r) The term "rooming house" means a house or
building where there are one or more bedrooms which
the proprietor can spare for the purpose of giving
lodgings to such persons as he chooses to receive;

(s) For the purpose of this article, a person shall be
considered to be blind only if his central visual acuity
does not exceed twenty/two hundred in the better eye
with correcting lenses, or if his visual acuity is greater
than twenty/two hundred but is occasioned by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees;

(t) The term "handicap" means any physical or mental impairment which substantially limits one or more of an individual's major life activities.

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall make, sign and file with the commission a verified complaint, which shall state the name and address of the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman or financial institution alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission's rules and regulations. The commission upon its own initiative, or the attorney general, shall, in like manner, make, sign and file such complaint. Any employer, whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this article, shall file with the commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be held, made or taken by the commission against such employer. Any complaint filed pursuant to this article must be filed within one hundred eighty days after the alleged act of discrimination.

After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the commission shall make a prompt investigation in connection therewith.

If it shall be determined after such investigation that no probable cause exists for substantiating the allegations of the complaint, the commission shall, within ten days from such determination, cause to be issued and
32 served upon the complainant written notice of such
determination, and the said complainant or his attorney
34 may, within ten days after such service, file with the
35 commission a written request for a meeting with the
36 commission to show probable cause for substantiating
37 the allegations of the complaint. If it shall be deter-
38 mined after such investigation or meeting that probable
39 cause exists for substantiating the allegations of the
40 complaint, the commission shall immediately endeavor
41 to eliminate the unlawful discriminatory practices
42 complained of by conference, conciliation and persua-
43 sion. The members of the commission and its staff shall
44 not disclose what has transpired in the course of such
45 endeavors: Provided, That the commission may publish
46 the facts in the case of any complaint which has been
47 dismissed, and the terms of conciliation when the
48 complaint has been adjusted, without disclosing the
49 identity of the parties involved.

50 In case of failure so to eliminate such practice or in
51 advance thereof, if in the judgment of the commission
52 circumstances so warrant, the commission shall cause to
53 be issued and served a written notice, together with a
54 copy of such complaint as the same may have been
55 amended, in the manner provided by law for the service
56 of summons in civil actions, requiring the person,
57 employer, labor organization, employment agency,
58 owner, real estate broker, real estate salesman or
59 financial institution named in such complaint, hereinafter
60 referred to as respondent, to answer the charges of
61 such complaint at a hearing before the commission in
62 the county where the respondent resides or transacts
63 business at a time and place to be specified in such
64 notice: Provided, That said written notice be served at
65 least thirty days prior to the time set for the hearing.

66 The case in support of the complaint shall be pre-
67 sented before the commission by one of its attorneys or
68 agents. The respondent may file a written, verified
69 answer to the complaint and appear at such hearing in
70 person or otherwise, with or without counsel, and submit
71 testimony and evidence. Except as provided in this
72 article, all of the pertinent provisions of article five,
chapter twenty-nine-a of this code shall apply to and
govern the hearing and the administrative procedures
in connection with and following such hearing, with like
effect as if the provisions of said article five were set
forth in extenso in this section.

If, after such hearing and consideration of all of the
testimony, evidence and record in the case, the commis-
sion shall find that a respondent has engaged in or is
engaging in any unlawful discriminatory practice as
defined in this article, the commission shall issue and
cause to be served on such respondent an order to cease
and desist from such unlawful discriminatory practice
and to take such affirmative action, including, but not
limited to, hiring, reinstatement or upgrading of
employees, with or without back pay, admission or
restoration to membership in any respondent labor
organization, or the admission to full and equal enjoy-
ment of the services, goods, facilities, or accommoda-
tions offered by any respondent place of public accom-
modation, and the sale, purchase, lease, rental or
financial assistance to any complainant otherwise
qualified for the housing accommodation or real
property, denied in violation of this article, as in the
judgment of the commission, will effectuate the pur-
poses of this article, and including a requirement for
report of the manner of compliance. Such order shall be
accompanied by findings of fact and conclusions of law
as specified in section three, article five, chapter twenty-
ine-a of this code.

If, after such hearing and consideration of all of the
testimony, evidence and record in the case, the commis-
sion shall find that a respondent has not engaged in such
unlawful discriminatory practice, the commission shall
state its findings of fact and conclusions of law as
aforesaid and shall issue and cause to be served on the
complainant an order dismissing the said complaint as
to such respondent.

A copy of its order shall be delivered in all cases by
the commission to the complainant, the respondent, the
attorney general and to such other public officers as the
commission may deem proper. Any such order shall not
be enforceable except as provided in section eleven of this article.

§5-11-11. Appeal and enforcement of commission orders.

(a) From any final order of the commission, an application for review may be prosecuted by either party to the supreme court of appeals within thirty days from the receipt thereof by the filing of a petition therefor to such court against the commission and the adverse party as respondents, and the clerk of such court shall notify each of the respondents and the commission of the filing of such petition. The commission 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 commission 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 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 commission of the fact by mail. If a review be granted or the certified question docketed, the case shall be heard by the court in the manner provided for other cases.

The appeal procedure contained in this subsection shall be the exclusive means of review, notwithstanding the provisions of chapter twenty-nine-a of this code: Provided, That such exclusive means of review shall not apply to any case wherein an appeal or a petition for enforcement of a cease and desist order has been filed with a circuit court of this state prior to the first day of April, one thousand nine hundred eighty-seven.
(b) In the event that any person shall fail to obey a final order of the commission within thirty days after receipt of the same, or, if applicable, within thirty days after a final order of the supreme court of appeals, a party or the commission may seek an order from the circuit court for its enforcement. Such proceeding shall be initiated by the filing of a petition in said court, and served upon the respondent in the manner provided by law for the service of summons in civil actions; a hearing shall be held on such petition within sixty days of the date of service. The court may grant appropriate temporary relief, and shall make and enter upon the pleadings, testimony and proceedings such order as is necessary to enforce the order of the commission or supreme court of appeals.

CHAPTER 65
(Com. Sub. for H. B. 2216—By Delegates Ashley and Flanigan)

[Passed March 14, 1987; in effect July 1, 1987. Vetoed by the Governor. Passed over veto.]

AN ACT to amend article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to the medicaid program for maternity and infant care; setting forth legislative intent and requirements in respect thereof; and providing for cooperation and funds transfer between the department of health and department of human services in implementation thereof, together with required specified dollar increase and effective date thereof.

Be it enacted by the Legislature of West Virginia:

That article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve, relating to the medicaid program for maternity and infant care; setting forth legislative intent and requirements in respect thereof; and providing for cooperation and funds transfer between the department of health and department of human services in implementation thereof, together with required specified dollar increase and effective date thereof.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-12. Medicaid program; maternity and infant care.

1 (a) The Legislature finds that high rates of infant
mortality and morbidity are costly to the state in terms of human suffering and of expenditures for long-term institutionalization, special education and medical care. It is well documented that appropriate care during pregnancy and delivery can prevent many of the expensive, disabling problems our children experience. There exists a crisis in this state relating to the availability of obstetrical services, particularly to patients in rural areas, and to the cost patients must pay for obstetrical services. An increase in payments for total obstetrical care is needed so that providers will be encouraged to perform this vital service for medicaid patients, enabling these patients to receive quality medical care and to give birth to healthier babies and, consequently, improving the health status of the next generation.

The Legislature further recognizes that public and private insurance mechanisms remain inadequate, and poor women and children are among the most likely to be without insurance. Generally, low-income, uninsured children receive half as much health care as their insured counterparts. The state is now investing millions to care for sick infants whose deaths and disabilities could have been avoided.

It is the intent of the Legislature that the department of human services participate in the medicaid program for indigent children and pregnant women established by Congress under the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public Law 99-272, and the Sixth Omnibus Budget Reconciliation Act (SOBRA), Public Law 99-504.

(b) The department of human services shall:

(1) Extend the medicaid coverage to pregnant women and infants below the federal poverty level.

(2) As provided under COBRA and SOBRA, infants shall be included under the medicaid coverage, with children under the age of one being eligible no later than July 1, 1987; children under the age of two being
eligible on October 1, 1987; children under the age of
three being eligible on October 1, 1988; children under
the age of four being eligible on October 1, 1989; and
children under the age of five being eligible on October
1, 1990.

(3) Elect the federal options provided under COBRA
and SOBRA, impacting pregnant women and children
below the poverty level: Provided, however, That no
provision in this article shall restrict the department of
human services in exercising new options provided by
or to be in compliance with new federal legislation that
further expands eligibility for children and pregnant
women.

(4) Enter into an interagency agreement with the
department of health whereby the department of health
is responsible for the implementation and program
design for a maternal and infant health care system to
reduce infant mortality in West Virginia. The health
system design may include quality assurance measures,
case management and patient outreach activities. The
department of human services shall assume responsibil-
ity for claims processing in accordance with established
fee schedules, and financial aspects of the program
necessary to draw down available federal dollars and to
meet federal rules and regulations.

(5) The department of health shall transfer to the
department of human services through interagency
agreement such state funds as are necessary to imple-
ment this program to the department of human services
medical services account; and the department of human
services shall, through inter-program transfer, provide
such state funds as are necessary to implement this
program.

(6) Beginning the first day of July, one thousand nine
hundred eighty-seven, the state department of human
services shall increase to six hundred dollars the
reimbursement rates under the medicaid program for
prenatal care, delivery, and post-partum care.
AN ACT to amend article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to establishing a pilot program for certain AFDC recipients seeking self-employment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.


(a) The Legislature finds and declares that a pilot program which allows recipients of benefits of the federal aid to families with dependent children program (AFDC), Title 42 §601 et seq., United States Code, to maintain their benefits during the start-up phase of their self-supporting business, will assist these individuals in becoming independent of all public assistance. This pilot program will provide the opportunity for AFDC recipients to improve their quality of life and to apply their entrepreneurial skills in the market place. In addition, this program will help contribute to the tax base and may provide additional jobs.

(b) The department of human services shall develop and implement during the fiscal year beginning the first day of July, one thousand nine hundred eighty-seven, a pilot program testing the feasibility of treating, with respect to the continuation of benefits until self sufficiency is achieved and public assistance is no longer required, the efforts of AFDC recipients to become self-employed in a similar manner as efforts are treated
under other existing department programs to seek other employment or training. The pilot program shall consist of up to twenty participants in no more than five counties.

(c) Eligibility for the pilot program shall consist of current AFDC recipients selected through a voluntary, informed consent process and withdrawal from the program shall not lead to automatic loss of benefits, except that eligibility may be redetermined.

(d) During the start up period of self-employment, which shall in no instance exceed two years, the participant shall continue receiving public assistance benefits at the level at which she or he was receiving them at the time of entry into the pilot program.

(e) A participant shall be permitted to separate business assets from personal assets during start up activity.

(f) The department shall establish guidelines by which the AFDC recipient's business assets shall be evaluated during the start up period as an indication that the business enterprise is providing personal income sufficient to replace to public assistance benefits and other noncash benefits which may be affected by the personal income ceiling. When the assets of the business enterprise reach that level determined to be sufficient, the AFDC recipient shall have the burden of showing why the business income is not of a level sufficient to terminate the public assistance benefits subject to provision of subsection (d) of this section.

(g) Guidelines for evaluation shall be based primarily on criteria utilized by small business loan officers and others of like expertise to determine what level of assets is necessary to maintain the type of business undertaken by the recipient. The department may establish an advisory group of persons engaged in small business or other appropriate members to establish such criteria.

(h) Individual case evaluations by these criteria shall be done in consultation with a technical assistance provider or other monitor who has had direct involvement with the participant under review.
(i) Technical assistance shall be included in the pilot program and the department may contract with existing training programs or other qualified providers with experience relevant to pilot program participants for such technical assistance. It shall include, but not be limited to, basic business planning, fiscal management and appropriate sales or other marketing skills.

(j) Upon completion of the pilot program, if it is determined that the project was effective in achieving the objective of assisting participants to establish self-employment sufficient to relinquish public assistance benefits, the department shall implement a similar statewide program for qualified applicants.

(k) Effectiveness of the pilot program shall be evaluated by the department in consultation with members of the small business advisory group, technical assistance providers and individual case monitors.

(l) If state funding is not secured for this pilot by the first day of July, one thousand nine hundred eighty-seven, the department shall apply for federal waivers and explore other funding sources to implement funding of the pilot program.

**CHAPTER 67**

(S. B. 487—By Senators Tonkovich, Mr. President, by request, and Harman)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]  

AN ACT to amend and reenact section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article six by adding thereto two new sections, designated sections eleven-a and thirty-five, relating to approval of insurance forms by the insurance commissioner; right to return medicare supplement policy, certificate or contract; and mass marketed life and health insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-8. Approval of forms.
§33-6-11a. Right to return medicare supplement policy, certificate or contract.
§33-6-35. Mass marketed life and health insurance.

§33-6-8. Approval of forms.

1 (a) Except as provided in section eight, article seventeen of this chapter (fire and marine forms), no insurance policy form, no group certificate form, no insurance application form where written application is required and is to be made a part of the policy, and no rider, endorsement or other form to be attached to any policy, shall be delivered or issued for delivery in this state by an insurer unless it has been filed with and approved by the commissioner, except that as to group insurance policies delivered outside this state, only the group certificates to be delivered or issued for delivery in this state shall be filed with the commissioner upon his request. This section shall not apply to policies, riders, endorsements or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or accident and sickness insurance policies, and are used at the request of the individual policyholder, contract holder or certificate holder, nor to the surety bond forms.

2 (b) Every such filing shall be made not less than thirty days in advance of any such delivery. At the expiration of such thirty days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional thirty days the period within which he may so affirmatively approve or
disapprove any such form, by giving notice of such extension before expiration of the initial thirty-day period. At the expiration of such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(c) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor.

(d) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(e) Notwithstanding any other provisions of this section, any mass marketed life and/or health insurance policy offered to members of any association by an association where the primary purpose of such association is other than the sale of insurance to its members, shall be exempt from the provision requiring prior approval under this section.

(f) This section shall apply also to any form used by domestic insurers for delivery in a jurisdiction outside West Virginia, if the insurance supervisory official of such jurisdiction informs the commissioner that such form is not subject to approval or disapproval by such official, and upon the commissioner's order requiring the form to be submitted to him for the purpose. The applicable same standards shall apply to such forms as apply to forms for domestic use.

§33-6-11a. Right to return medicare supplement policy, certificate or contract.

Medicare supplement or limited benefit medicare supplement policies, certificates or contracts (as such terms are defined by regulations issued by the commissioner) issued to persons eligible for medicare by reason
of age, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy, certificate or contract, attached thereto stating in substance that the insured person shall have the right to return the policy, and to have the premium refunded if, after examination of the policy, certificate or contract, the insured person is not satisfied for any reason. Policies, certificates or contracts issued pursuant to a direct response solicitation to persons eligible for medicare by reason of age shall have a notice prominently printed on the first page or attached thereto, stating in substance that the policyholder, certificate holder or contract holder shall have the right to return the policy, certificate or contract within thirty days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

§33-6-35. Mass marketed life and health insurance.

(a) No mass marketed life or health insurance including mass marketed life or health insurance under a group or blanket policy issued outside this state to residents of this state, shall be effected on persons in this state until the commissioner finds that the total charges for the insurance to the persons insured are reasonable in relation to the benefits provided.

(1) "Direct response solicitation" means any offer by an insurer to persons in this state, either directly or through a third party, to effect life or health insurance coverage which enables the individual to apply or enroll for the insurance on the basis of the offer. It shall not include solicitations for insurance through an employee benefit plan which is defined in P.L. 90-406, 88 Stat. 829, nor shall it include such a solicitation through the individual's creditor with respect to credit life or credit health insurance.

(2) "Mass marketed life or health insurance" for purposes of this article, means the insurance under any individual, franchise, group or blanket policy of life or health insurance which is offered by means of direct response solicitation through a sponsoring organization.
or through mails or other mass communications media
and under which the person insured pays all or
substantially all of the cost of his or her insurance.

(b) Any insurer extending mass marketed life or
health insurance under a group or blanket policy issued
outside this state to residents of this state shall comply
with respect to such insurance with the requirements of
this state relating to advertising and to claim settlement
practices.

AN ACT to amend article fifteen, 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 thirteen; and to amend article sixteen
of said chapter thirty-three by adding thereto a new
section, designated section nine, all relating to accident
and sickness insurance policies; and providing that no
insurer may cancel or nonrenew coverage because of the
diagnosis or treatment of acquired immune deficiency
syndrome.

Be it enacted by the Legislature of West Virginia:

That article fifteen, 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 thirteen; and that article sixteen of said chapter thirty-
three be amended by adding thereto a new section, designated
section nine, all to read as follows:

Article.
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-13. Policies not to terminate coverage because of
diagnosis or treatment of acquired immune
deficiency syndrome.

1 No insurer may cancel or nonrenew the accident and
sickness insurance policy of any insured because of diagnosis or treatment of acquired immune deficiency syndrome.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-9. Policies not to terminate coverage because of diagnosis or treatment of acquired immune deficiency syndrome.

No insurer may cancel or nonrenew the accident and sickness insurance policy of any insured because of diagnosis or treatment of acquired immune deficiency syndrome.

CHAPTER 69

(Com. Sub. for H. B. 2970—By Delegates Southern and Phillips)

[Passed March 14, 1987; 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 thirty-one, relating to captive insurance; definitions; licensing; authority; names of companies; minimum capital; letter of credit; minimum surplus; letter of credit; formation of captive insurance companies in this state; reports and statements; examinations and investigations; grounds and procedures for suspension or revocation of license; legal investments; reinsurance; rating organizations; memberships; exemption from compulsory associations; tax on premiums collected; rules and regulations; and laws applicable; and by adding a new article designated article thirty-two, relating to the formation and operation of risk retention groups; definitions; risk retention groups chartered in this state; risk retention groups not chartered in this state; taxation; compliance with unfair claims settlement practices law; prohibitive, deceptive, false or fraudulent practices; examination regarding financial condition; notice to purchasers; prohibited acts regarding solicitation or sale; prohibited coverage; delinquency
proceedings; compulsory associations; countersignatures not required; purchasing groups exemption; notice and registration requirements of purchasing groups; restrictions on insurance purchased by purchasing groups; administrative and procedural authority; penalties; duty on agents or brokers to obtain license; binding effect of orders issued in the United States District Court; and rules.

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 two new articles, designated articles thirty-one and thirty-two, to read as follows:

Article.
32. Risk Retention Act.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.
§33-31-2. Licensing; authority.
§33-31-3. Names of companies.
§33-31-4. Minimum capital; letter of credit.
§33-31-5. Minimum surplus; letter of credit.
§33-31-6. Formation of captive insurance companies in this state.
§33-31-7. Reports and statements.
§33-31-8. Examinations and investigations.
§33-31-9. Grounds and procedures for suspension or revocation of license.
§33-31-10. Legal investments.
§33-31-12. Rating organizations; memberships.
§33-31-14. Tax on premiums collected.
§33-31-16. Laws applicable.

§33-31-1. Definitions.

1 As used in this chapter, unless the context requires otherwise:

2 (1) “Affiliated company” means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation or management.

3 (2) “Association” means any legal association of
individuals, corporations, partnerships or associations that has been in continuous existence for at least one year, the member organizations of which collectively:

(A) Own, control or hold with power to vote all for the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(B) Have complete voting control over an association captive insurance company incorporated as a mutual insurer.

(3) "Association captive insurance company" means any company that insures risks of the member organizations of the association, and their affiliated companies.

(4) "Captive insurance company" means any pure captive insurance company, association captive insurance company, or industrial insured captive insurance company formed or licensed under the provisions of this chapter.

(5) "Commission" means the insurance commission of West Virginia.

(6) "Industrial insured" means an insured:

(A) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(B) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars; and

(C) Who has at least twenty-five full-time employees.

(7) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(8) "Industrial insured group" means any group that meets either of the following criteria:

(A) Any group of industrial insureds that collectively:

(i) Own, control or hold with power to vote all of the
outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(ii) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(B) Any group which is created under the Product Liability Risk Retention Act of 1981 (U.S. Public Law 97-45) as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under the law of the state of West Virginia:

(i) Whose primary activity consists of assuming and spreading all, or any portion, of the product liability or completed operations liability risk exposure of its group members;

(ii) Which is organized for the primary purpose of conducting the activity described in subdivision (i) of this section;

(iii) Which does not exclude any person from membership in the group solely to provide for members of such group a competitive advantage over such a person; and

(iv) Which is composed of members each of whose principal activity consists of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product or products.

(9) “Member organization” means any individual, corporation, partnership or association that belongs to an association.

(10) “Parent” means a corporation, partnership or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting securities of a pure captive insurance company.

(11) “Pure captive insurance company” means any company that insures risks of its parent and affiliated companies.
§33-31-2. Licensing; authority.

(a) Any captive insurance company, when permitted by its articles of association or charter, may apply to the commissioner for a license to do any and all insurance comprised in chapter thirty-three of this code: Provided, That said captive insurance company maintains its principal office and principal place of business in this state: Provided, however, That:

(1) No pure captive insurance company may insure any risks other than those of its parent and affiliated companies;

(2) No association captive insurance company may insure any risks other than those of the member organizations of its association, and their affiliated companies;

(3) No industrial insured captive insurance company may insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(4) No captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof; and

(5) No captive insurance company may accept or cede reinsurance except as provided in section eleven hereof.

(b) No captive insurance company may do any insurance business in this state unless:

(1) It first obtains from the commissioner a license authorizing it to do insurance business in this state;

(2) Its board of directors holds at least one meeting each year in this state;

(3) It maintains its principal place of business in this state; and

(4) It appoints a resident registered agent to accept service of process and to otherwise act on its behalf in this state. Whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the secretary of state
shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(c) Before receiving a license, a captive insurance company shall file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner.

In addition to the information required above, each applicant captive insurance company shall file with the commissioner evidence of the following:

(1) The amount and liquidity of its assets relative to the risks to be assumed;

(2) The adequacy of the expertise, experience, and character of the person or persons who will manage it;

(3) The overall soundness of its plan of operation;

(4) The adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and

(5) Such other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) Each captive insurance company shall pay to the commissioner a nonrefundable fee of two hundred dollars for examining, investigating, and processing its application for license and upon issuance of a license, an annual license fee of three hundred dollars. In addition, it shall pay fees and charges in accordance with article three of this chapter.

(e) If the commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this chapter, he may grant a license authorizing it to do insurance business in this state until April first, thereafter, which license may be renewed.
§33-31-3. Names of companies.

1 No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the state of West Virginia.

§33-31-4. Minimum capital; letter of credit.

1 No pure captive insurance company, association captive insurance company incorporated as a stock insurer, or industrial insured captive insurance company incorporated as a stock insurer shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital of:

(1) In the case of a pure captive insurance company, not less than one hundred thousand dollars;

(2) In the case of an association captive insurance company incorporated as a stock insurer, not less than three hundred twenty thousand dollars; and

(3) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than one hundred sixty thousand dollars.

Such capital may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by the state of West Virginia or a member bank of the federal reserve system and approved by the commissioner.

§33-31-5. Minimum surplus; letter of credit.

1 No captive insurance company shall be issued a license unless it shall possess and thereafter maintain free surplus of:

(1) In the case of a pure captive insurance company, not less than one hundred fifty thousand dollars;

(2) In the case of an association captive insurance company incorporated as a stock insurer, not less than two hundred eighty thousand dollars;

(3) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than two hundred forty thousand dollars;
(4) In the case of an association captive insurance company incorporated as a mutual insurer, not less than six hundred thousand dollars; and

(5) In the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than four hundred thousand dollars.

Such surplus may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by the state of West Virginia or member bank of the federal reserve system and approved by the commissioner.

§33-31-6. Formation of captive insurance companies in this state.

(a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) An association captive insurance company or an industrial insured captive insurance company may be incorporated:

(1) As a stock insurer with its capital divided into shares and held by the stockholders; or

(2) As a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(c) A captive insurance company shall have at least one incorporator who shall be a resident of this state.

(d) Before the articles of association are transmitted to the secretary of state, the incorporators shall petition the commissioner to issue a certificate setting forth his finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at such finding the commissioner shall consider:

(1) The character, reputation, financial standing and purpose of the incorporators;
(2) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(3) Such other aspects as the commissioner shall deem advisable.

(e) The articles of association, such certificate, and the organization fee shall be transmitted to the secretary of state, who shall thereupon record both the articles of incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) At least one of the members of the board of directors of a captive insurance company incorporated in this state shall be a resident of this state.

(h) Captive insurance companies formed under the provisions of this chapter shall have the privileges and be subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter. In the event of conflict between the provisions of said general corporation law and the provisions of this chapter, the latter shall control.

§33-31-7. Reports and statements.

(a) Captive insurance companies shall not be required to make any annual report except as provided in this chapter.

(b) On or before March first of each year, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. Each association captive insurance company shall file its report in the form required by section fourteen, article three of this chapter. The commissioner shall by rule propose the form in which pure captive insurance companies and industrial insured captive insurance companies shall report.
§33-31-8. Examinations and investigations.

At least once in three years, and whenever the commissioner determines it to be prudent, he shall personally, or by some competent person appointed by him, visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with the provisions of this chapter. The commissioner upon application, in his discretion, may extend the aforesaid three-year period to five years, provided said captive insurance company is subject to a comprehensive annual audit during such period of a scope satisfactory to the commissioner by independent auditors approved by him. The expenses and charges of the examination shall be paid to the state by the company or companies examined and the finance director shall issue his warrants for the proper charges incurred in all examinations.

§33-31-9. Grounds and procedures for suspension or revocation of license.

(a) The license of a captive insurance company to do any insurance business in this state may be suspended or revoked by the commissioner for any of the following reasons:

(1) Insolvency or impairment of capital or surplus;

(2) Failure to meet the requirements of section four or five of this article;

(3) Refusal or failure to submit an annual report, as required by section seven of this article, or any other report or statement required by law or by lawful order of the commissioner;

(4) Failure to comply with the provisions of its own charter or bylaws;

(5) Failure to submit to examination or any legal obligation relative thereto, as required by section eight of this article;

(6) Refusal or failure to pay the cost of examination as required by section eight of this article;
(7) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or

(8) Failure otherwise to comply with the laws of this state.

(b) If the commissioner finds, upon examination, hearing or other evidence, that any captive insurance company has committed any of the acts specified in subsection (a), he may suspend or revoke such license if he deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this title.

§33-31-10. Legal investments.

(a) An association captive insurance company shall comply with the investment requirements of the commissioner.

(b) No pure captive insurance company or industrial insured captive insurance company may be subject to any restrictions on allowable investments whatever. The commissioner may, however, prohibit or limit any investment that threatens the solvency or liquidity of any such company.


(a) Any captive insurance company may provide reinsurance, as required in section fifteen, article four of this chapter, on risks ceded by any other insurer.

(b) Any captive insurance company may take credit for reserves on risks ceded to a reinsurer: Provided, That no captive insurance company may reinsure a risk or part thereof with reinsurers not complying with the provisions of section seventeen, article four of this chapter.

§33-31-12. Rating organizations; memberships.

No captive insurance company may be required to join a rating organization.
1 No captive insurance company may be permitted to
2 join or contribute financially to any plan, pool, associ-
3 ation or guaranty or insolvency fund in this state, nor
4 any captive insurance company, or its insured, or its
5 parent or any affiliated company, or any member
6 organization of its association, receive any benefit from
7 any such plan, pool, association or guaranty or insolv-
8 ency fund for claims arising out of the operations of
9 such captive insurance company.

§33-31-14. Tax on premiums collected.
1 (a) Each captive insurance company shall pay to the
2 commissioner, in the month of February of each year,
3 a tax at the rate of five tenths of one percent on the gross
4 amount of all premiums collected or contracted for on
5 policies or contracts of insurance covering property or
6 risks in this state and on risks and property situated
7 elsewhere upon which no premium tax is otherwise paid
8 during the year ending December thirty-first, next
9 preceding, after deducting from the gross amount of
10 premiums, subject to the tax, the amount received as
11 reinsurance premiums on business in the state and the
12 amount paid to policyholders as return premiums which
13 shall include dividends on unabsorbed premiums or
14 premium deposits returned or credited to policyholders.
15 (b) The tax provided for in this section shall constitute
16 all taxes collectible under the laws of this state from any
17 captive insurance company, and no other premium tax
18 or other taxes shall be levied or collected from any
19 captive insurance company by the state or any county,
20 city or municipality within this state, except ad valorem
21 taxes.

1 The commissioner may establish rules and from time
2 to time amend such rules relating to captive insurance
3 companies as are necessary to enable him to carry out
4 the provisions of this chapter.

§33-31-16. Laws applicable.
1 No provisions of this code, other than those contained
2 in this chapter or contained in specific references
ARTICLE 32. RISK RETENTION ACT.

§33-32-1. Purpose and short title.


§33-32-3. Risk retention groups chartered in this state.

§33-32-4. Risk retention groups not chartered in this state.

§33-32-5. Tax on premiums collected.

§33-32-6. Compliance with unfair claims settlement practices law.

§33-32-7. Prohibitive, deceptive, false, or fraudulent practices.


§33-32-10. Prohibited acts regarding solicitation or sale.

§33-32-11. Prohibition on ownership by an insurance company.

§33-32-12. Prohibited coverage.


§33-32-16. Purchasing groups; exemption from certain laws relating to the group purchase of insurance.

§33-32-17. Notice and registration requirements of purchasing groups.

§33-32-18. Restrictions on insurance purchased by purchasing groups.

§33-32-19. Administrative and procedural authority regarding risk retention groups and purchasing groups.


§33-32-21. Duty on agents or brokers to obtain license.


§33-32-1. Purpose and short title.

The purpose of this act is to regulate the formation and operation of risk retention groups in this state formed pursuant to the provisions of the federal liability risk retention act of 1986, hereinafter referred to as "RRA 1986". This article may be referred to as the Risk Retention Act of West Virginia.


As used in this article, the term:

(a) "Commissioner" means the insurance commissioner of the State of West Virginia or the commissioner, director or superintendent of insurance in any other state.

(b) "Completed operations liability" means liability
arising out of the installation, maintenance, or repair of
any product at a site which is now owned or controlled
by:

(1) Any person who performs that work; or
(2) Any person who hires an independent contractor
to perform that work; but shall include liability for
activities which are completed or abandoned before the
date of the occurrence giving rise to the liability.

(c) "Domicile" for purposes of determining the state
in which a purchasing group is domiciled, means:

(1) For a corporation, the state in which the purchas-
ing group is incorporated; and
(2) For an unincorporated entity, the state of its
principal place of business.

(d) "Hazardous financial condition" means that, based
on its present or reasonably anticipated financial
condition, a risk retention group, although not yet
financially impaired or insolvent, is unlikely to be able:

(1) To meet obligations to policyholders with respect
to known claims and reasonably anticipated claims; or
(2) To pay other obligations in the normal course of
business;

(e) "Insurance" means primary insurance, excess
insurance, reinsurance, surplus lines insurance, and any
other arrangement for shifting and distributing risk
which is determined to be insurance under the laws of
this state.

(f) "Liability" means legal liability for damages
(including costs of defense, legal costs and fees, and
other claims expenses) because of injuries to other
persons, damage to their property, or other damage or
loss to such other persons resulting from or arising out
of:

(1) Any business (whether profit or nonprofit), trade,
product, services (including professional services),
premises, or operations;
(2) Any activity of any state or local government, or any agency or political subdivision thereof; or

(3) Does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act.

(g) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to herein;

(h) "Plan of operation" or a "feasibility study" means an analysis which presents the expected activities and results of a risk retention group including at a minimum:

(1) The coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(2) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(3) Pro forma financial statements and projections;

(4) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(5) Identification of management, underwriting procedures, managerial oversight methods, investment policies; and

(6) Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.

(i) "Product liability" means liability for damages
because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

(j) "Purchasing group" means any group which:

(1) Has as one of its purposes the purchase of liability insurance on a group basis;

(2) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (3);

(3) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(4) Is domiciled in any state.

(k) "Risk retention group" means any corporation or other limited liability association formed under the laws of any state:

(1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(2) Which is organized for the primary purpose of conducting the activity described under subparagraph (1);

(3) Which: (i) is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or (ii) before the first day of January, one thousand nine hundred eighty-eight, was chartered or licensed and authorized to engage in the business of insurance under the laws of this state, and, before such date, had certified to the insurance commissioner of at least one
state that it satisfied the capitalization requirements of
such state, except that any such group shall be consi-
dered to be a risk retention group only if it has been
engaged in business continuously since such date and
only for the purpose of continuing to provide insurance
to cover product liability or completed operations
liability as such terms were defined in the product
liability risk retention act of 1986 before the date of the
enactment of the risk retention act of 1986;

(4) Which does not exclude any person from member-
ship in the group solely to provide for members of such
group a competitive advantage over such a person;

(5) Which has as it members only persons who have
an ownership interest in the group and which has as its
owners only persons who are members who are provided
insurance by the risk retention group:

(A) Has as its sole owner an organization which is
owned by persons who are provided insurance by the
risk retention group.

(6) Whose members are engaged in businesses or
activities similar or related with respect to the liability
of which such members are exposed by virtue of any
related, similar, or common business trade, product,
services, premises, or operations;

(7) Whose activities do not include the provision of
insurance other than:

(A) Liability insurance for assuming and spreading
all or any portion of the liability of its group members;
and

(B) Reinsurance with respect to the liability of any
other risk retention group or any members of such other
group which is engaged in businesses or activities so
that such group or member meets the reinsurance
requirement set forth herein, from membership in the
risk retention group which provides such reinsurance;
and

(8) The name of which includes the phrase "Risk
Retention Group".
“State” means any state of the United States or the District of Columbia.

§33-32-3. Risk retention groups chartered in this state.

A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this article, must comply with all of the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this state and with section 4 of this article to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this state. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance.

§33-32-4. Risk retention groups not chartered in this state.

Risk retention groups chartered in states other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(A) Notice of operations and designation of commissioner as agent.

(a) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under this article;

(2) A copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile: Provided, however, That the
21 provision relating to the submission of a plan of
22 operation or a feasibility study shall not apply with
23 respect to any line or classification of liability insurance
24 which (a) was defined in the federal product liability
25 risk retention act of 1981 before the twenty-seventh day
26 of October, one thousand nine hundred eighty-six and (b)
27 was offered before such date by any risk retention group
28 which had been chartered and operating for not less
29 than three years before such date; and
30 (3) A statement of registration which designates the
31 commissioner as its agent for the purpose of receiving
32 service of legal documents or process.
33 (B) Financial condition.
34 Any risk retention group doing business in this state
35 shall submit to the commissioner:
36 (1) A copy of the group's financial statement submit-
37 ted to its state of domicile, which shall be certified by
38 an independent public accountant and contain a state-
39 ment of opinion on loss and loss adjustment expense
40 reserves made by a member of the American academy
41 of actuaries or a qualified loss reserve specialist (under
42 criteria established by the national association of
43 insurance commissioners);
44 (2) A copy of each examination of the risk retention
45 group as certified by the commissioner or public official
46 conducting the examination;
47 (3) Upon request by the commissioner, a copy of any
48 audit performed with respect to the risk retention
49 group; and
50 (4) Such information as may be required to verify its
51 continuing qualification as a risk retention group under
52 this article.
§33-32-5. Tax on premiums collected.
1 (a) Each risk retention group shall be subject to the
2 same interests, fines and penalties for non-payment as
3 that generally applicable to insurers under article three,
4 chapter thirty-three of this code: Provided, That the
5 premium tax or other taxes on each risk retention group
shall be in accordance with the provisions of this section. Each risk retention group insurance company shall pay to the commissioner, in the month of February of each year, a tax at the rate of three quarters of one percent on the gross amount of all premiums collected or contracted for on policies or contracts of insurance covering property or risks in this state and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending December 31 next preceding, after deducting from the gross amount of premiums subject to the tax the amount received as reinsurance premiums on business in the state and the amount paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders: Provided, however, That the three quarters of one percent premium tax provided for herein shall be waived for a period of five years and thereafter be applicable at a reduced rate of one-half of one percent on the gross amount of premiums provided for herein-above, if the said risk retention groups makes a minimum qualified investment of two million dollars in the state of West Virginia during the five year waiver period, as a direct result thereof and the tax commissioner so certifies.

(b) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any risk retention group, and no other premium tax or other taxes shall be levied or collected from any risk retention group by the state or any county, city or municipality within this state, except ad valorem taxes.

(c) To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.

(d) To the extent agents or brokers are not utilized or fail to pay the subject tax, or taxes, each risk retention group shall pay the subject tax or taxes, risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.
§33-32-6. Compliance with unfair claims settlement practices law.

1 Any risk retention group, its agents and representatives, shall comply with the laws of this state, as set forth in chapter thirty-three of this code, regarding unfair claims settlement practices act of this state.

§33-32-7. Prohibitive, deceptive, false, or fraudulent practices.

1 Any risk retention group shall comply with the laws of this state, as provided in chapter thirty-three of this code, regarding prohibitive, deceptive, false or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.


1 Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner.


1 Any policy issued by a risk retention group shall contain in ten-point type on the front page and the declaration page, the following notice:

   NOTICE

   This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

§33-32-10. Prohibited acts regarding solicitation or sale.

1 The following acts by a risk retention group are hereby prohibited:
(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

(2) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

§33-32-11. Prohibition on ownership by an insurance company.

No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

§33-32-12. Prohibited coverage.

No risk retention group may offer insurance policy coverage prohibited by chapter thirty-three of this code or ruled unlawful by the highest court of this state.


A risk retention group not chartered in this state and doing business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under section four of this article.


No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds, receive any benefit from any such fund for claims arising out of the operations of such risk retention group.


A policy of insurance issued to a risk retention group or any member of that group shall not be required to be countersigned.
§33-32-16. Purchasing groups; exemption from certain laws relating to the group purchase of insurance.

Any purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Act of 1986 shall be exempt from any law of this state relating to the creation of groups for the purchase of insurance, prohibition of group purchasing or any law that would discriminate against a purchasing group or its members. In addition, an insurer shall be exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages or other matters. A purchasing group shall be subject to all other applicable laws of this state.

§33-32-17. Notice and registration requirements of purchasing groups.

(a) A purchasing group which intends to do business in this state shall furnish notice to the commissioner which shall:

1 Identify the state in which the group is domiciled;

2 Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

3 Identify the insurance company from which the group intends to purchase its insurance and the domicile of such company;

4 Identify the principal place of business of the groups; and

5 Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under this article.

(b) The purchasing group shall register with and designate the commissioner (or other appropriate
authority) as its agent solely for the purpose of receiving
service of legal documents or process, except that such
requirements shall not apply in the case of a purchasing
group which:

(1) Was domiciled before the first day of April, one
thousand nine hundred eighty-six;

(2) Is domiciled on and after the second day of
October, one thousand nine hundred eighty-six in any
state of the United States which:

(i) Before the twenty-seventh day of October, one
thousand nine hundred eighty-six purchased insurance
from an insurance carrier licensed in any state; and

(ii) Since the twenty-seventh day of October, one
thousand nine hundred eighty-six, purchased its insu-
rance from an insurance carrier licensed in any state;

(3) Which was a purchasing group under the require-
ments of the product liability risk retention act of 1981
before the twenty-seventh day of October, one thousand
nine hundred eighty-six; and

(4) Which does not purchase insurance that was not
authorized for purposes of an exemption under that Act,
as in effect before the twenty-seventh day of October,
one thousand nine hundred eighty-six.

§33-32-18. Restrictions on insurance purchased by pur-
chasing groups.

A purchasing group may not purchase insurance from
a risk retention group that is not chartered in a state
or from an insurer not admitted in the state in which
the purchasing group is located, unless the purchase is
effected through a licensed agent or broker acting
pursuant to the surplus lines laws and regulations of
such state.

§33-32-19. Administrative and procedural authority
regarding risk retention groups and pur-
chasing groups.

The commissioner is authorized to make use of any of
the powers established under chapter thirty-three of this
code to enforce the laws of this state so long as those powers are not specifically preempted by the national product liability risk retention act of 1981, as amended by the risk retention amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.


A risk retention group which violates any provision of this Act will be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license and/or the right to do business in this state.

§33-32-21. Duty on agents or brokers to obtain license.

Any person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, which solicits members, sells insurance coverage, purchases coverage for its members located within the state or otherwise does business in this state shall, before commencing any such activity, obtain a license from the commissioner.


An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state (or in all states or in any territory or possession of the United States) upon a finding that such a group is in a hazardous financial condition shall be enforceable in the courts of the state.


The commissioner may establish and from time to
time amend such rules relating to risk retention groups
as may be necessary or desirable to carry out the
provisions of this article.

CHAPTER 70

(Com. Sub. for H. B. 2255—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 14, 1987; in effect from passage. Approved by the Governor.]
judges, irrespective of whether or not such persons would otherwise qualify for benefits under said article; providing for credits toward eligibility; granting certain credits for military service without requiring payment therefor; granting certain credits for services as prosecuting attorney in certain cases, requiring payment therefor and establishing the rate of such payment; providing for the transfer of credits between the judges' retirement system and the public employees retirement system; limiting the use of the same retirement credits in both systems; deleting obsolete provisions; including any required payments by county commissions into judges' retirement system trust fund; specifying military service credits allowable up to five years maximum; allowing retirement at earlier age through use of actuarially reduced percentage for pension benefit determination, receivable throughout retirement; providing for increase in retirement benefits due to increases in judicial salaries occurring during retirement; authorizing state auditor to determine reasonable rate of interest for judicial members acquiring service credit periods and payments therefor; providing for spousal annuities to be payable from all trust fund moneys, including appropriations made thereto; establishing certain benefits for surviving orphans of judges in certain cases; establishing certain new criteria for eligibility for receipt of retirement benefits by judges; requiring of minimum of twelve years actual service as a judge as a condition of eligibility of benefits; providing for shorter service period for entitlement to disability retirement for judges; revising disability retirement benefit applicable to new judge members retiring upon disability subsequent to specified date; specifying certain effective dates; and providing for severability of the provisions of said article and of the amendments thereto.

Be it enacted by the Legislature of West Virginia:

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

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

§51-9-la. Definitions.

§51-9-lb. Statement of legislative intent, policy and finding.

§51-9-3. Custody, permissible investment and administration of retirement system trust fund; state auditor's authority as administrator and trust fund fiduciary; refunds required, including interest.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; military service credit and maximum allowable.

§51-9-5. Election not to participate, contribute, or be a member; authorized transfers of service credit by a judge; duplicate use of service credit prohibited.

§51-9-6. Eligibility for and payment of benefits.

§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.


§51-9-16. Severability of article and amendments thereto.

§51-9-la. Definitions.

1 As used in this article the term "judge" or "judge of any court of record" or "judge of any court of record of this state" shall mean, refer to and include judges of the several circuit courts and justices of the supreme court of appeals.

§51-9-lb. Statement of legislative intent, policy and finding.

1 The decision and opinion of the state supreme court of appeals in the case of In re Judge Dostert, which was rendered on the seventh day of November, in the year one thousand nine hundred eighty-four, and other decisions and opinions of that court based upon the Dostert decision have served to make substantial and fundamental changes in the retirement system for judges as established by the Legislature under the provisions of this article. These substantial and fundamental changes have served to or resulted in (i) expanding and greatly easing the requirements necessary to qualify to receive retirement annuity benefits
from the system, (ii) making many persons eligible for retirement annuity benefits from the system at an earlier date than would have been the case under the provisions of the article, (iii) unjustly increasing the amount of retirement annuity benefits to be received by certain judges or justices would or will receive and (iv) altering or reducing the authority of the state auditor as the primary administrator of the judges retirement fund and of the Governor to determine the eligibility of persons seeking to claim retirement annuity benefits from the fund and placed these functions within the province of the court administrator; thus removing the statutory authority of public officers outside the judicial branch of state government to determine the eligibility of judges and justices to receive such benefits or to see to the financial stability and soundness of the fund or to ensure fiscal accountability with respect thereto.

The Legislature hereby declares that the Dostert decision and the subsequent decisions of the supreme court of appeals which were based upon the Dostert decision were not and do not constitute sound legal principles, in that they have served to rewrite contractual arrangements found to exist by the supreme court of appeals in the case of Wagoner v. Gainer decided on the fifteenth day of June, one thousand nine hundred eighty-one, and, further, usurped the authority of the Legislature to determine or formulate the public policy of this state as required by article V, section 1 and article VI, section 1 of the Constitution of West Virginia and further usurped the authority of the Legislature to set judicial compensation.

The Legislature hereby states and finds that its intent and policy recognizes a compelling state interest is present in carrying out its constitutional responsibilities of establishing, determining and setting reasonable compensation guidelines and amounts for judicial officers, by law, and of protecting the fiscal responsibility and soundness of the moneys required for payment into the trust fund, as a part of the judicial branch budget request, which is determined by benefits payable from the judicial retirement system, and which judicial
budget request may not be reduced by the Legislature, constitutionally.

The amendments now made to the provisions of this retirement system by the Legislature are made within the original and continuing framework of such system and with the benefits hereunder being directed toward those meeting the strict and fundamental requirements of career judicial service on the bench, of military service and service as a prosecuting attorney as granted by this article.

§51-9-3. Custody, permissible investment and administration of retirement system trust fund; state auditor's authority as administrator and trust fund fiduciary; refunds required, including interest.

The state treasurer shall be the custodian of the fund and of any investment securities of the retirement system and shall give a separate and additional bond for the faithful performance of his or her duties as such custodian. The governor shall fix the amount of such bond which shall be approved as to sufficiency and form by the attorney general and shall be filed in the office of the secretary of state. The premium on such bond shall be paid from the fund.

In a manner and to an extent consonant with sound administrative principles, the state board of investments shall have authority to invest such fund in interest-bearing securities of the United States of America, of the state of West Virginia and of any political subdivision thereof or such other investments as may be authorized or permitted by the provisions of article six, chapter twelve of this code.

The state auditor shall be the primary fiscal officer, responsible for the records and administration of the trust fund, including budgetary matters incident to the authority vested in him or her with respect to judicial department appropriations under article VI, section 51 of the Constitution of West Virginia. The state auditor shall also, as trust fund fiduciary, independently determine anew, in a substantive sense and as a check
and balance, any information concerning eligible service years, required money contributions, computation of judge's retirement benefit or spousal benefit or any other substantive element of qualification supplied or certified to the state auditor by any other public officer, including the supreme court administrator or the chief executive, toward proper final review before issuance of a state warrant in payment of any benefit under the judges' retirement system.

In respect of any credited service heretofore acquired under the Dostert decision and subsequent related decisions, the state auditor shall make refund to any person heretofore making payment to acquire such service credit, primary or derivative, in the amount so earlier paid, together with interest at the same rate such sum actually earned because of its investment by the auditor or treasurer, as the case may be, in the consolidated pension pool or with the interest such sum would have earned if timely invested in such pool, whichever amount of interest be greater.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; military service credit and maximum allowable; qualifiable prosecutorial service.

Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the judges' retirement fund six percent of the salary received by such person out of the state treasury: Provided, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of required employee contributions prior to actual retirement under this retirement system, is rejected as erroneous and contrary to legislative intent, and as violative of required equal treatment and is hereby nullified and discontinued fully,
with the state auditor to require such contribution in
every instance hereafter, except where no contributions
are required to be made any of the provisions of this
article.

In drawing warrants for the salary checks of judges,
the state auditor shall deduct from the amount of each
such salary check six percent thereof, which amount so
deducted shall be credited by the state treasurer to the
trust fund.

Any judge seeking to qualify military service to be
claimed as credited service, in allowable aggregate
maximum amount up to five years, shall be entitled to
be awarded the same without any required payment in
respect thereof to the judges' retirement fund. Any
judge holding office as such on the effective date of the
amendments to this article adopted by the Legislature
at its regular session in the year one thousand nine
hundred eighty-seven, who seeks to qualify service as a
prosecuting attorney as credited service, which service
credit must have been earned prior to the year one
thousand nine hundred eighty-seven, shall be required
to pay into the judges' retirement fund six percent of
the annual salary which was actually received by such
person as prosecuting attorney during the time such
prosecutorial service was rendered prior to the year one
thousand nine hundred eighty-seven, and for which
credited service is being sought, together with applica-
table interest. No judge whose term of office shall
commence after the effective date of such amendments
to this article, shall be eligible to claim any credit for
service rendered as a prosecuting attorney as eligible
service for retirement benefits under this article, nor
shall any time served as a prosecutor after the year one
thousand nine hundred eighty-eight, be considered as
eligible service for any purposes of this article.

§51-9-5. Election not to participate, contribute, or be a
member; authorized transfers of service credit
by a judge; duplicate use of service credit
prohibited.

(a) Notwithstanding any provisions of this article, any
2 judge may in writing notify the auditor within thirty
days after he or she takes office, or, if he or she is in
office, on the date this article becomes effective, then
within thirty days from such latter date, that such judge
elects not to become a member or make any payments
or contributions to the trust fund, in which event every
judge, so electing, shall not thereafter at any time be
entitled to receive any retirement pay or benefits under
provisions of this article, and any deduction that may
have theretofore been made from the salary of such
judge and paid into the fund shall be refunded without
interest, to him or her by the auditor by warrant drawn
on the trust fund. Any judge who has so elected not to
become a member or not to contribute, shall nevertheless
thereafter be permitted to become such member,
contribute and become eligible for retirement benefits
by paying into the judges' retirement fund all contribu-
tions such judge would have been required to pay into
the fund, together with interest thereon at a rate to be
determined by the state auditor as reasonable for such
prior periods, as if such judge had not previously elected
not to be a member and not to contribute.

(b) There may be transfers of service credit on proper
basis between the judges' retirement system and the
public employees retirement system, where such service
credit constitutes qualified and eligible credit under the
recipient system's statutes, in order to allow full
flexibility of choice of option by a judge or judicial
member; but in no case shall benefits be receivable from
more than one of such state retirement systems, nor
shall any service credit be usable more than once and
then only in the finally chosen state retirement system.

§51-9-6. Eligibility for and payment of benefits.

(a) Except as otherwise provided in sections five,
twelve and thirteen of this article, and subject to the
provisions of subsection (e) of this section, any person
who is now serving, or who shall hereafter serve, as a
judge of any court of record of this state and shall have
served as such judge for a period of not less than sixteen
full years and shall have reached the age of sixty-five
years, or who has served as judge of such court or of
that court and other courts of record of the state for a period of sixteen full years or more (whether continuously or not and whether said service be entirely before or after this article became effective, or partly before and partly after said date, and whether or not said judge shall be in office on the date he or she shall become eligible to benefits hereunder) and shall have reached the age of sixty-five years, or who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than twenty-four full years, regardless of age, shall, upon a determination and certification of his or her eligibility as provided in section nine hereof, be paid from the fund annual retirement benefits, so long as he or she shall live, in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office and as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement, and shall be payable in monthly installments: Provided, That such retirement benefits shall be paid only after such judge has resigned as such or, for any reason other than his or her impeachment, his or her service as such has ended: Provided, however, That every such person seeking to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of twelve years as a sitting judge of any such court of record.

(b) Notwithstanding any other provisions of this article, any person who is now serving or who shall hereafter serve as a judge of any court of record of this state and who shall have accumulated sixteen years or more of credited service, at least twelve years of which is as a sitting judge of a court of record, and who has attained the age of sixty-two years or more but less than the age of sixty-five years, may elect to retire from his or her office and to receive the pension to which he or she would otherwise be entitled to receive at age sixty-
five, but with an actuarial reduction of pension benefit to be established as a reduced annuity receivable throughout retirement. The reduced percentage (less than seventy-five percent) actuarially computed, determined and established at time of retirement in respect of this reduced pension benefit shall also continue and be applicable to any subsequent new annual salary set for the office from which such judge has retired and as such salary may be changed from time to time during the period of his or her retirement.

(c) In determining eligibility for the benefits provided by this section, active full-time duty (including leaves and furloughs) in the armed forces of the United States shall be eligible for qualification as credited military service for the purposes of this article by any judge with twelve or more years actual service as a sitting judge of a court of record, such awardable military service to not exceed five years.

(d) If a judge of a court of record has who is presently sitting as such on the effective date of the amendments to this section enacted by the Legislature at its regular session held in the year one thousand nine hundred eighty-seven, and who has served for a period of not less than twelve full years and has made payments into the judges' retirement fund as provided in this article for each month during which he served as judge, following the effective date of this section, any portion of time which he or she had served as prosecuting attorney in any county in this state shall qualify as years of service, if such judge shall pay those sums required to be paid pursuant to the provisions of section four of this article: Provided, That any term of office as prosecuting attorney, or part thereof, commencing after the thirty-first day of December, one thousand nine hundred eighty-eight, shall not hereafter in any way qualify as eligible years of service under this retirement system.

(e) Any retirement benefit accruing under the provis-
sions of this section shall not be paid if otherwise barred under the provisions of article ten-a, chapter five of this code.
§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.

1. (a) There shall be paid, from the fund created or continued by section two of this article, or from such funds as may be appropriated by the Legislature for such purpose, an annuity to the surviving spouse of a judge, if such judge at the time of his or her death is eligible for the retirement benefits provided by any of the provisions of this article, or who has, at death, actually served five years or more as a sitting judge of any court of record of this state, exclusive of any other service credit to which such judge may otherwise be entitled, and who dies either while in office or after resignation or retirement from office pursuant to the provisions of this article. Said annuity shall amount to forty percent of the annual salary of the office which said judge held at his or her death or from which he or she resigned or retired. In the event said salary is increased or decreased while an annuitant is receiving the benefits hereunder, his or her annuity shall amount to forty percent of the new salary. The annuity granted hereunder shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month for which the annuity shall have accrued. Such annuity shall commence on the first day of the month in which said judge dies and shall, subject to the provisions of subsection (b) of this section, terminate upon the death of the annuitant or shall terminate upon the remarriage of the annuitant.

2. (b) If there be no surviving spouse at the time of death of a judge who dies after serving five years or more as a sitting judge of any court of record and such judge leaves surviving him any dependent child or children such dependent child or children shall receive an amount equal to twenty percent of the annual salary of the office which said judge held at the time of his or her death: Provided, That the total of all such annuities payable to each such child shall not exceed in the aggregate an amount equal to forty percent of such
salary. Such annuity shall continue as to each such child until (i) he or she attains the age of eighteen years or (ii) attains the age of twenty-three years so long as such child remains a full-time student. The auditor shall by legislative rule establish the criteria for determining a person’s status as a full-time student within the meaning and intent of this subsection. In the event there are surviving any such judge three or more dependent children, then each such child’s annuity shall be proratably reduced in order that the aggregate annuity received by all such dependent children does not exceed forty percent of such salary and the amount to be so received by any such child shall continue throughout the entire period during which each such child is eligible to receive such annuity. The provisions of this subsection shall also apply to those circumstances and situations wherein a surviving spouse of a deceased judge shall die while receiving benefits pursuant to subsection (a) of this section and who shall leave surviving dependent children of such deceased judge who would be entitled to benefits under this subsection as if they had succeeded to such annuity benefits upon the death of such judge in the first instance. In the event the salary of judges is increased or decreased while an annuitant is receiving benefits pursuant to this subsection, the annuities payable shall be likewise increased or decreased proportionately to reflect such change in salary. The annuities granted hereunder shall accrue monthly and shall be due and payable in monthly installments on the same day as surviving spouses benefits are required to be paid. Such annuities shall commence on the first day of the month in which any such dependent child becomes eligible for benefits hereunder and shall terminate on the last day of the month during which such eligibility ceases.


(a) Whenever a judge of a court of record of this state, who is not disqualified from participation herein as provided in section five of this article, who shall have served for ten full years, or if over the age of sixty-five years, who shall have served at least six years as a judge
of a court of record, shall become physically or mentally incapacitated to perform the duties of his or her office as judge during the remainder of his or her term and shall make a written application to the governor for his or her retirement, setting forth the nature and extent of his or her disability and tendering his or her resignation as such judge upon condition that upon its acceptance he or she be retired with pay under the provisions of this article, the governor shall make such investigation as the governor shall deem advisable and, if the governor shall determine that such disability exists and that the public service is suffering and will continue to suffer by reason of such disability, the governor shall thereupon accept the resignation and, by written order filed in the office of the secretary of state, direct the retirement of the judge for the unexpired portion of the term for which such judge was elected or appointed. The secretary of state shall thereupon file a certified copy of such order with the state auditor. When so accepted, said resignation shall create a vacancy in such office of judge, which shall be filled by appointment or election as provided by law. The retired judge shall thereupon be paid annual retirement pay during the remainder of his or her unexpired term in an amount equal to the annual salary he or she was receiving at the time of his or her disability retirement, which annual retirement pay, so long as it shall be paid to him or her, shall be in lieu of any and all retirement benefits such judge may otherwise have received under provisions of this article: Provided, That when the payment of such full salary as disability retirement pay shall have terminated with the close of his or her term of office, such judge, even though he or she shall not have arrived at the age of sixty-five years, shall, so long as the disability determined by the governor continues to exist, be paid the retirement benefits for which provision is made in section six of this article: Provided, however, That in the event any such judge shall die during the continuation of his or her disability, then such judge's surviving spouse shall receive the benefits to which he or she would have been entitled pursuant to the provisions of section six-b of this article and
subject to the limitations thereon: Provided further, That any judge becoming a new member of this retirement system on or after the first day of April, one thousand nine hundred eighty-seven, and retiring upon disability retirement subsequent to such date shall be paid upon the basis of seventy-five percent of highest annual salary, with allowable salary increase, as provided in section six of this article during all disability retirement receipt periods.

(b) Any other provision of this section to the contrary notwithstanding, no judge shall be eligible pursuant to this section unless such judge is also disabled to such an extent so as to preclude such judge from engaging in the practice of law during all of the period of such disability.

§51-9-16. Severability of article and amendments thereto.

If any section, subsection, clause, phrase or requirement of this article or if any section, subsection, clause, phrase or requirement of this article as amended by the Legislature at its regular session held in the year one thousand nine hundred eighty-seven, if for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions. The Legislature hereby declares that it would have passed this article, and each section, subsection, sentence, clause or phrase and requirement thereof, including any amendments thereto adopted by the Legislature at its regular session held in the year one thousand nine hundred eighty-seven, irrespective of the fact that any one or more sections, subsections, clauses, phrases or requirements be declared unconstitutional.

CHAPTER 71
(H. B. 2247—By Delegates McCormick and McKinley)

[Passed March 13, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter twenty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to continuing the department of labor, following an audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

That section five, article one, 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 1. STATE DEPARTMENT OF LABOR.

§21-1-5. Reestablishment of department; findings.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the department of labor should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the department of labor shall continue to exist until the first day of July, one thousand nine hundred eighty-eight.
issuance of citations by commissioner for violations; establishing an occupational health and safety review commission to review the commissioner's citations and determinations; terms; compensation; notification to employer of violation; hearing; appeal from review commission; discrimination against employee; investigation; civil action; authorizing circuit courts to enjoin certain dangerous conditions or practices in places of employment; research and demonstration projects; education programs; reports to United States secretary of labor; advisory board; membership; appointment; terms; vacancies; and compensation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. OCCUPATIONAL SAFETY AND HEALTH ACT.

§21-3A-1a. Legislative policy.
§21-3A-3. Division of occupational safety and health; coordination of activities with workers' compensation commissioner.
§21-3A-4. Application of article.
§21-3A-5. Duties of employer and employee.
§21-3A-7. Adoption of federal and state standards; variances.
§21-3A-8. Inspections and investigations; records.
§21-3A-9. Citation for violation.
§21-3A-10. Occupational safety and health review commission.
§21-3A-11. Notice to employer of contest period; action by commissioner; action by review commission.
§21-3A-12. Appeal from review commission.
§21-3A-14. Enjoining of conditions or practices at places of employment; mandamus against commissioner for failure to act.
§21-3A-16. Education program.
§21-3A-17. Reports to United States secretary of labor.
§21-3A-18. Occupational safety and health advisory board created; qualifications of members; members appointed by governor; term; filling of vacancies; payment of expenses.

1 This article shall be known and cited as the "West Virginia Occupational Safety and Health Act."

§21-3A-1a. Legislative policy.

1 The Legislature finds that the safety and health of public employees in the workplace is of primary public concern. Personal injuries and illnesses arising out of work situations result not only in wage loss and increased medical expenses for public employees, but also in decreased productivity and increased workers' compensation expenses for public employers. The Legislature therefore declares:

(a) That it is the policy of this state to ensure that all public employees be provided with safe and healthful work environments free from recognized and avoidable hazards;

(b) That it is the responsibility of the state to promulgate standards for the protection of the health and safety of its public workforce; and

(c) That it is in the public interest for public employers and public employees to join in a cooperative effort to enforce these standards.


1 As used in this chapter, unless the context clearly indicates otherwise:

(a) "Commission" means the occupational safety and health review commission established under this article;

(b) "Commissioner" means the labor commissioner or his designated agent;

(c) "Employee" means any public employee of the state, or any state agency;

(d) "Employer" means public employer and shall include the state or any department, division, bureau, board, council, agency or authority of the state, but shall not include the department of corrections, the department of health and the Legislature;

(e) "Occupational safety and health standard" means
a standard for health or safety which requires the
adoption or use of one or more practices, means,
methods, operations or processes reasonably necessary
or appropriate to provide safe and healthful employment
in places of employment;

(f) "Person" means one or more individuals; and

(g) "Workplace" means a place where public em-
ployees are assigned to work but shall not include any
place where public employees are assigned to work that
is inspected and regulated in accordance with federal
occupational safety and health standards or mine safety
and health administration standards, or facilities under
the authority of the department of corrections, the
department of health, or the Legislature.

§21-3A-3. Division of occupational safety and health;
coordination of activities with workers' compensation commissioner.

(a) There is hereby created in the labor department
a division of occupational safety and health, comprised
of a subdivision for safety, a subdivision for health and
such other subdivisions as the commissioner considers
necessary. This division shall administer all matters
pertaining to occupational safety and occupational
health.

(b) The labor commissioner may require the assist-
ance of other state agencies and may enter into
agreements with other state agencies and political
subdivisions of the state for the administration of this
chapter.

(c) The labor commissioner shall provide for coordi-
nation between the division of occupational safety and
health and the workers' compensation commissioner
including, but not limited to, the establishment of
standardized procedures and reportings.

§21-3A-4. Application of article.

(a) This article applies to all public employers, public
employees and public workplaces within the state of
West Virginia.
(b) Nothing in this article may be construed to supersede or in any manner affect any workers' compensation law or to diminish in any manner common law or statutory rights, duties or liabilities of employers or employees, under any law with respect to injuries, diseases or death of employees arising out of and in the course of employment.

§21-3A-5. Duties of employer and employee.

(a) Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards causing or likely to cause death or serious physical harm or serious illness to his employees.

(b) Each employer shall, upon the written request of any employee, furnish the employee with a written statement listing the substances which the employee uses or with which the employee comes into contact, which substances have been identified as toxic and hazardous by occupational safety and health standards, under Title 29 CFR 1910.1000 “Air Contaminant Code of Federal Regulations” through 1910.1046, or listed in the most recent National Institute for Occupational Safety and Health Registry of the Toxic Effects of Chemical Substances (RTECS).

(c) Each employer shall comply with occupational safety and health standards promulgated under this article.

(d) Each employee shall comply with occupational safety and health standards and all regulations and orders issued pursuant to this article which are applicable to his actions and conduct.


In the rules adopted under the authority of this article, the commissioner shall:

(a) Provide for the preparation, adoption, amendment or repeal of rules necessary to effectuate the health and safety purposes of this article;

(b) Provide educational programs to encourage em-
employers and employees in their efforts to reduce the number of safety and health hazards and to stimulate employers and employees to institute new programs, and to perfect existing programs to provide for safe and healthful working conditions;

(c) Provide for appropriate reporting procedures by employers with respect to information relating to conditions of employment which will assist in achieving the objectives of this article;

(d) Provide for the frequency, method and manner of making inspections of workplaces without advance notice: Provided, That in the event of an emergency or unusual situation, the commissioner may give advance notice;

(e) Provide for the publication and dissemination to employers, employees and labor organizations and the posting, where appropriate, by employers of informational, educational or training materials calculated to aid and assist in achieving the objectives of this article; and

(f) Provide for the establishment of new programs, and the perfection and expansion of existing programs for occupational safety and health education for employers and employees and institute methods and procedures to establish a program for voluntary compliance by employers and employees with the requirements of this article and all applicable safety and health standards and regulations promulgated pursuant to the authority of this article.

§21-3A-7. Adoption of federal and state standards; variances.

(a) The commissioner, on or before the first day of July, one thousand nine hundred eighty-seven, shall provide at the minimum, for the adoption of all occupational safety and health standards, amendments or changes adopted or recognized by the United States Secretary of Labor under the authority of the Occupational Safety and Health Act of 1970, which are in effect on the effective date of this section. Where no federal
standards are applicable, or where standards more stringent than the federal standards are deemed advisable, the commissioner shall provide for the development of such state standards as will comport with the purposes of this act. Standards shall be adopted through state administrative procedures.

(b) In the event of emergency or unusual situations, the commissioner shall provide for an emergency temporary standard to take effect immediately if he determines:

(1) Employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and

(2) The emergency standard is necessary to protect employees from such danger.

The emergency standard may be in effect not longer than one hundred eighty days or, if renewed in compliance with the laws of this state governing the adoption or extension of rules, not longer than sixty additional days. On or before the expiration date of the emergency standard or renewal thereof, the commissioner shall develop a permanent standard to replace the emergency standard.

(c) Any standard promulgated shall prescribe the use of labels or other appropriate forms of warning necessary to ensure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and, where appropriate, proper conditions and precautions of safe use or exposure. The standard shall also prescribe suitable protective equipment and control procedures for use in connection with such hazards and shall provide for measuring employee exposure in the manner necessary for the protection of employees. In addition, where appropriate, the standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available to employees exposed to such hazards in order to determine any adverse effect from that exposure.
(d) Any employer may apply to the commissioner for a temporary order granting a variance from a standard, or any provision thereof, promulgated under this section. A temporary order shall be granted if the employer files an application which meets the requirements of subsection (e) of this section and establishes that:

1. He is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

2. He is taking all available steps to safeguard employees against the hazards covered by the standard; and

3. He has an effective program for coming into compliance with the standard as quickly as practicable.

Any temporary order issued under this subsection shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. A temporary order may be granted only after notice by the commissioner to employees and an opportunity for a hearing before the commissioner: Provided, That the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter: Provided, however, That an order may be renewed if the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect longer than one hundred eighty days.

(e) An application for a temporary variance order shall contain:
(1) A specification of the standard or portion thereof from which the employer seeks a variance;

(2) A representation by the employer, supported by representations from qualified persons who have firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;

(3) A statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standards;

(4) A statement of when he expects to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to come into compliance with the standard; and

(5) A certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall inform them of their right to petition the commissioner for a hearing. The commissioner is authorized to grant a variance from any standard or portion thereof whenever he determines that a variance is necessary to permit an employer to participate in an experiment, approved by the commissioner, designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(f) Any affected employer may apply to the commissioner for an order granting a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing before the commissioner. The commissioner shall issue such order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a
preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment which are as safe and healthful as those which would prevail if he complied with the standard. The order issued shall prescribe the conditions the employer must maintain and the practices, means, methods, operations and processes which he must adopt and utilize to the extent they differ from the standard in question. The order may be modified or revoked upon application by an employer or employees, or by the commissioner on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(g) Any employee who may be adversely affected by a standard or variance or regulation issued under this section may challenge the validity or applicability of a standard or variance or regulation by bringing an action for a declaratory judgment.

(h) It is the expressed intent of the Legislature that an unlimited number of variances may be granted, if the conditions of this section are met.

§21-3A-8. Inspections and investigations; records.

(a) In order to carry out the purposes of this article, the commissioner or his agent, upon presenting appropriate credentials to the employer, is authorized:

(1) To enter without advance notice, except as provided in subsection (d) of section six, and at reasonable times may enter any workplace or environment where work is performed by an employee of an employer; and

(2) To inspect and investigate, during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and the materials therein, and to question privately any employer or employee. No public employer may refuse to allow a representative of the commissioner to inspect a
place of employment. If an employer attempts to prevent a representative of the department from conducting an inspection, the commissioner may obtain an inspection warrant from the circuit court of Kanawha County or the circuit court of the county wherein the employer is located.

(b) In making his inspections and investigations under this entire article the commissioner may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this state. In case of contumacy or failure or refusal of any person to obey such an order, the circuit court for the judicial circuit wherein the person resides, is found or transacts business has jurisdiction to issue to the person an order requiring the person to appear, to produce evidence if asked and, when so ordered, to give testimony relating to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(c) (1) Each employer shall make, keep, preserve and make available to the commissioner and the United States secretary of labor records regarding his activities relating to this entire article as the commissioner may prescribe by rule as necessary or appropriate for the enforcement of this article or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this subdivision, these rules may include provisions requiring employers to conduct periodic inspections. The commissioner shall also issue rules requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this entire article, including the provisions of applicable standards.

(2) The commissioner shall prescribe rules requiring employers to maintain accurate records of and to make periodic reports on work-related deaths, injuries and illnesses other than minor injuries requiring only first-aid treatment and not involving medical treatment, loss
of consciousness, restriction of work or motion or transfer to another job.

(3) The commissioner shall issue rules requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any occupational safety and health standard adopted under this entire chapter. These regulations shall provide employees or their representatives an opportunity to observe the monitoring or measuring and to have access to the records. The regulations shall also make appropriate provisions for each employee or former employee to have such access to the records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section six of this article and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the commissioner under this entire article shall be obtained with a minimum burden upon employers. Unnecessary duplication of efforts in obtaining information shall be eliminated to the maximum extent feasible.

(e) Subject to rules issued by the commissioner, a representative of the employer and a representative authorized by the employees of the employer shall be given an opportunity to accompany the commissioner or his authorized representative during the physical inspection of any workplace for the purpose of aiding the inspection. Where there is no authorized employee representative, the commissioner or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f) (1) Any employee or representative of employees who believes that there is a violation of an occupational
safety or health standard or that there is an imminent danger of physical harm may request an inspection by giving notice to the commissioner or his authorized representative of the violation or danger. The notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice and shall be signed by the employees or their representative. A copy of the notice shall be provided the employer or his agent no later than the time of the inspection: Provided, That upon the request of the person giving the notice, his name and the names of individual employees referred to therein shall not appear in the copy or on any record published, released or made available pursuant to subsection (g) of this section. If, upon receipt of the notification, the commissioner determines there are reasonable grounds to believe that such violation or danger exists, he shall make an inspection in accordance with the provisions of this section as soon as practicable to determine if the violation or danger exists. The commissioner shall maintain records of the results of any such investigation, which shall be made available to the public upon request. The authority of the commissioner to inspect any premises for purposes of investigating an alleged violation of safety standards shall not be limited to the alleged violation but shall extend to any other area of the premises in which he has reason to believe that a violation of the safety standards promulgated under this act exists. If the commissioner determines there are no reasonable grounds to believe that the violation or danger exists, he shall notify the employer, employee or representative of employees in writing of the determination. The notification does not preclude future enforcement action if conditions change.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in the workplace may notify the commissioner, or any representative of the commissioner responsible for conducting the inspection, in writing of any violation of this entire article which they have reason to believe exists in the workplace. The commissioner shall, by rule, establish procedures for review of any refusal by a
representative of the commissioner to issue a citation
with respect to any alleged violation, and shall furnish
the employer and the employees or representative of
employees requesting the review a written statement of
the reasons for the commissioner's final disposition of
the case. The notification does not preclude future
enforcement action if conditions change.

(g) (1) The commissioner is authorized to compile,
analyze and publish in either summary or detail form
all reports or information obtained under this section.

(2) The commissioner shall prescribe such rules as he
considers necessary to carry out his responsibilities
under this article, including rules dealing with the
inspection of an employer's or owner's establishment.

§21-3A-9. Citation for violation.

(a) If, upon inspection or investigation, the commis-
sioner or his authorized representative believes that an
employer or employee has violated any safety and health
standards or variance or the commissioner finds a
condition which poses a recognized hazard likely to
cause death or serious physical harm or illness, the
commissioner shall, with reasonable promptness, issue
a citation to the employer or employee. Each citation
shall be in writing and shall describe with particularity
the nature of the violation, including a reference to the
provision of this article, or the standard, rule or order
alleged to have been violated. The citation shall fix a
reasonable time for the abatement of the violation.

(b) Each citation issued under this section or a copy
or copies thereof shall be prominently posted as
prescribed in rules issued by the commissioner at or
near each place a violation referred to in the citation
occurred.

§21-3A-10. Occupational safety and health review
commission.

(a) There is hereby created a West Virginia occupa-
tional safety and health review commission within the
labor department for administrative purposes only. The
commission shall consist of three members appointed by
the governor, by and with consent of the Senate, from among persons who, by reason of training, education or experience, are qualified to carry out the functions of the commission under this article. The governor shall designate one of the members of the commission to serve as chairman.

(b) Members of the review commission shall serve terms of four years and until their successors are appointed.

(c) The review commission shall hold monthly meetings and such additional meetings as necessary. A majority of the review commission shall constitute a quorum for the transaction of business. Special meetings of the review commission may be called upon reasonable notice by the commissioner or by any two members of the commission.

(d) The review commission shall hear and rule on appeals from citations, variances and notifications issued under the provisions of this article and shall adopt and promulgate rules with respect to the procedural aspects of its hearings. The rules shall provide affected employees and their representatives an opportunity to participate as parties at hearings under this section. Such employees shall be given time off by their employers to participate in these hearings.

(e) The chairman of the commission and each of the other two members shall be paid a per diem allowance for days in performance of their duties at the rate of one hundred dollars per diem, together with their expenses at a rate determined by law.

(f) To conduct hearings, the review commission or chairman may subpoena and examine witnesses, require the production of evidence, administer oaths and take testimony and depositions.

(g) After hearing an appeal the review commission may sustain, modify or dismiss a citation.

§21-3A-11. Notice to employer of contest period; action by commissioner; action by review commission.

(a) If, after inspection or investigation, the commis-
sioner issues a citation pursuant to section nine, he shall, within a reasonable time after the termination of the inspection or investigation, notify the employer or employee by certified mail. The notification shall inform the employer or employee that he has fifteen working days from the receipt of notice within which to notify the commissioner that he wishes to contest the citation or to seek a variance. If the employer or employee fails to so notify the commissioner within fifteen days, and if no notice is filed by any employee or representative of employees pursuant to subsection (c) of this section within fifteen days, the citation, as proposed, becomes a final order and not subject to review by any court or agency.

(b) If the commissioner has reason to believe that an employer or employee has failed to correct a violation for which a citation has been issued within the period permitted for correction, the commissioner shall notify the employer or employee by certified mail or personal service of such failure and the commissioner shall seek judicial enforcement of such citation order: Provided, That in the case of a review proceeding initiated by the employer or employee under this section in good faith and not solely for delay, the period permitted for correction of the violation does not begin to run until the entry of a final order by the review commission. The notification by the commissioner shall inform the employer or employee that he has fifteen working days from the receipt of the notice within which to notify the commissioner that he wishes to contest the notification. If, within fifteen days from receipt of notification under this section, the employer or employee fails to notify the commissioner that he intends to contest the notification, the notification and assessment as proposed become a final order of the commission and not subject to review by any court or agency.

(c) If an employer or employee notifies the commissioner within the fifteen day period provided for in subsection (b) of this section that he wishes to contest the notification, the commissioner shall immediately advise the commission of the notification and the
commission shall afford an opportunity for a hearing. Upon a showing by an employer or employee of a good faith effort to comply with the abatement requirements of a citation and a showing that abatement has not been completed because of factors beyond his reasonable control, the commissioner, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in the citation. The rules of procedure prescribed by the commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

(d) If the employer or employee, at a hearing under subsection (c) of this section, does not prove he made a good faith effort to comply, the commission shall seek judicial enforcement to compel compliance.

§21-3A-12. Appeal from review commission.

Any employer or employee, or the commissioner, adversely affected or aggrieved by an order of the review commission, after all administrative remedies provided by this article have been exhausted, is entitled to judicial review pursuant to section four, article five, chapter twenty-nine-a of this code.


(a) No employer may discharge or in any manner discriminate against any employee because the employee has filed any complaint, instituted or caused to be instituted or participated in any proceedings under or related to this article, has testified or is about to testify in any such proceedings or has exercised on behalf of himself or others any right afforded by this article.

(b) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after the alleged violation occurs, file a complaint with the commissioner alleging such discrimination. Upon receipt of the complaint the commissioner shall
cause an investigation to be made. If after such investigation the commissioner determines that the provisions of this section have been violated, he shall bring an action in the circuit court of Kanawha County against the employer. In any such action, the court has jurisdiction, for cause shown, to restrain violations of subsection (a) of this section and to order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay plus interest at the statutory rate in this state.

§21-3A-14. Enjoining of conditions or practices at places of employment; mandamus against commissioner for failure to act.

(a) The circuit court of Kanawha County or the circuit court in the county wherein the workplace is located has jurisdiction, upon petition by the commissioner, to restrain or enjoin any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided by this article. Any order issued under this section may require such steps to be taken as are necessary to avoid, correct or remove the imminent danger and prohibit the employment or presence of any individual in locations or under conditions where the imminent danger exists, except the presence of those individuals whose presence is necessary to avoid, correct or remove such imminent danger, or to maintain the capacity of a continuous process operation, or to resume normal operations without a complete cessation of operations or, where a cessation of operation is necessary, to permit such to be accomplished in a safe and orderly manner. No temporary restraining order issued without notice may be effective for more than five days.

(b) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) of this section exist in any place of employment, he shall inform the affected employees and employer of the danger and shall further inform those persons that he

The commissioner shall conduct research and undertake demonstration projects relating to occupational safety and health issues and problems, either within the labor department or by grants or contracts. The commissioner may prescribe rules requiring employers to measure, record and make reports on exposure of employees to toxic substances which he believes may endanger the health or safety of employees. The commissioner shall cooperate with the director of the national institute for occupational safety and health of the department of health and human services of the United States in establishing programs of medical examinations and tests necessary to determine the incidence of occupational illness and employee susceptibility to such illnesses. Such programs, upon the request of the employer, may be paid for by the commissioner, together with such other assistance as may be required. Information obtained under this section shall be made public without revealing the names of individual workers covered by physical examination or special studies and shall be made available to employers, employees and their authorized representatives.

§21-3A-16. Education program.

(a) The commissioner shall conduct directly or by grants or contracts education programs to provide an adequate supply of qualified personnel to carry out the purposes of this article and information programs on the importance and proper use of adequate safety and health equipment.

(b) The commissioner is authorized to conduct directly or by grants or contracts short-term training of personnel engaged in work related to this responsibility under this article.
(c) The commissioner shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance and prevention of unsafe or unhealthful working conditions in employment covered by this article. The commissioner shall consult with and advise employers, employees and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

§21-3A-17. Reports to United States secretary of labor.

In regard to the administration and enforcement of this article, the commissioner shall make reports to the secretary of labor of the United States in such form and containing such information as the secretary shall from time to time require.

§21-3A-18. Occupational safety and health advisory board created; qualifications of members; members appointed by governor; term; filling of vacancies; payment of expenses.

There is created a public employees occupational safety and health advisory board to assist the commissioner in establishing standards for the occupational safety and health of public employees. The board shall make itself available to receive information regarding matters of concern to public employees in the areas of occupational safety and health.

The board shall be composed of nine members in addition to the commissioner of labor who shall be an ex officio member and shall sit as chairman of the advisory board. The members of the board shall be citizens and residents of this state, who shall be selected on the basis of their responsibility, experience, competence and commitment in the field of public employee occupational safety and health.

The members of the board shall be appointed by and serve at the will and pleasure of the governor. There shall be three members representing public employers, three members who are public employees in the various areas of state and local government, and three members
who are not employers or employees as defined in this section and do not represent by their occupation either party. No more than five members appointed by the governor shall be from the same political party.

The terms of all members shall commence on the first day of July, one thousand nine hundred eighty-seven. The terms of one member representing public employers, one member representing public employees, and one member representing the general public shall run through the thirtieth day of June, one thousand nine hundred eighty-eight. The terms of one other member representing public employers, one other member representing public employees, and one other member representing the general public shall run through the thirtieth day of June, one thousand nine hundred eighty-nine. The terms of the remaining member representing public employers, the remaining member representing public employees, and the remaining member representing the general public shall run through the thirtieth day of June, one thousand nine hundred ninety. Thereafter, terms of members shall be for three years.

All members shall be eligible for reappointment by the governor. A member shall, unless sooner removed, continue to serve until his term expires and his successor has been appointed by the governor and has qualified. A vacancy caused by the death, resignation, or removal of a member prior to the expiration of his term shall be filled by the governor and only for the remainder of such term.

The members of the advisory board shall serve without compensation but shall be entitled to reimbursement for their necessary expenses actually incurred in the performance of their duties.


The governing body of any county or municipality or any department, division, bureau, board, council, agency or authority of any county or municipality or of any school district or special purposes district created pursuant to law may, by ordinance, resolution or other procedure, explicitly elect that some or all of its
workplaces or employees shall be covered by the provisions of this article. The commissioner shall issue rules and regulations and prescribe forms and procedures regarding such optional coverage. The commissioner may issue rules and regulations providing for variances from the procedural and substantive requirements of this article in the case of the optional coverage described herein.

CHAPTER 73
(S. B. 740—Originating in the Senate Committee on the Judiciary)

[Passed March 12, 1987; in effect ninety days from passage. Vetoed by the Governor. Passed over veto.]

AN ACT to amend and reenact sections one, fourteen, fifteen and sixteen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article three, chapter twenty-two-a of said code, all relating to the requirement of the posting of bond or other security to secure the payment of wages and fringe benefits by employers engaged in construction work or in the severance, production or transportation of minerals; defining certain terms with respect thereto; establishing rules as to when such bond would be required or exempted; the form of such bond; requiring a copy of such bond to be filed in the office of the clerk of the county commission wherein any such employer is doing business; authorizing certain civil or criminal proceedings to enforce the provisions of the article; providing for the procedures of termination of such bond; requiring certain notification to the commissioner of labor by persons who contract or subcontract with employers who are required to post such bonds; requiring the posting of such bonds as condition precedent to the receipt of a prospecting permit under the surface coal mining and reclamation act; prohibiting certain acts with respect to violations of the provisions of said article as the same relates to the bonding requirements thereof; and providing for penalties for violations thereof.
Be it enacted by the Legislature of West Virginia:

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

Chapter
22A. Mines and Minerals.

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

§21-5-15. Violations; criminal penalties.
§21-5-16. Contractors and subcontractors to notify commissioner.

§21-5-1. Definitions.

As used in this article:

(a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

(b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm or corporation.

(c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation. As used in sections four, five, eight-a, ten and twelve of this article, the term "wages" shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: Provided, That nothing herein contained shall require fringe benefits to be calculated contrary to any
agreement between an employer and his employees which does not contradict the provisions of this article.

(d) The term "commissioner" means commissioner of labor or his designated representative.

(e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term "special agreement" means an arrangement filed with and approved by the commissioner whereby a person, firm or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks: Provided, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance.

(h) The term "officer" shall include officers or agents in the management of a corporation or firm, who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term "wages due" shall include at least all wages earned up to and including the fifth day immediately preceding the regular payday.

(j) The term "construction" means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: Provided, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

(k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metallurgical ore.
(l) The term "fringe benefits" means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits and benefits relating to medical and pension coverage.

(m) The term "employer" means any person, firm or corporation employing any employee.

(n) The term "doing business in this state" means having employees actively engaged in the intended principal activity of the person, firm or corporation in West Virginia.


(a) Bond required. — With the exception of those who have been doing business in this state for at least five consecutive years, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the state of West Virginia, with the condition that the person, firm or corporation pay the wages and fringe benefits of his or its employees when due. The amount of the bond shall be equal to the total of the employer’s gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of employer’s gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer’s payroll increases or decreases: Provided, That the amount of the bond shall not be decreased, except with the commission’s approval and determination that there are not outstanding claims against the bond.

(b) Waiver. — The commissioner shall waive the posting of any bond required by subsection (a) of this section upon his determination that an employer is of sufficient financial responsibility to pay wages and
fringe benefits. The commissioner shall promulgate rules and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe standards for the granting of such waivers.

(c) **Form of bond; filing in office of circuit clerk.** — The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of an escrow account or a combination of these methods. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows:

- Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner's loan corporation; full faith and credit general obligation bonds of the state of West Virginia or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the state.
- The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the state treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The employer making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of the county commission of the county wherein the person, firm or corporation is doing business to be available for public inspection.

(d) **Employee cause of action.** — Notwithstanding any other provision in this article, any employee, whose wages and fringe benefits are secured by the bond, as specified in subsection (c) of this section, has a direct
cause of action against the bond for wages and fringe
benefits that are due and unpaid.

(e) Action of commissioner. — Any employee having
wages and fringe benefits unpaid, may inform the
commissioner of the claim for unpaid wages and fringe
benefits and request certification thereof. If the commis-
sioner, upon notice to the employer and investigation,
finds that such wages and fringe benefits or a portion
thereof are unpaid, he shall make demand of such
employer for the payment of such wages and fringe
benefits. If payment for such wages and fringe benefits
is not forthcoming within the time specified by the
commissioner, not to exceed thirty days, the commis-
sioner shall certify such claim or portion thereof, and
forward the certification to the bonding company or the
state treasurer, who shall provide payment to the
affected employee within fourteen days of receipt of
such certification. The bonding company, or any person,
firm or corporation posting a bond, thereafter shall have
the right to proceed against a defaulting employer for
that part of the claim the employee paid. The procedure
specified herein shall not be construed to preclude other
actions by the commissioner or employee to seek
enforcement of the provisions of this article by any civil
proceedings for the payment of wages and fringe
benefits or by criminal proceedings as may be deemed
appropriate.

(f) Posting and reporting by employer. — With the
exception of those exempt under subsection (a) of this
section, any employer who is engaged in construction
work or the severance, production or transportation
(excluding railroad and water transporters) of minerals
shall post the following in a place accessible to his or
its employees:

(1) A copy of the bond or other evidence of surety
specifying the number of employees covered as provided
under subsection (a) of this section, or notification that
the posting of a bond has been waived by the commis-

sioner; and

(2) A copy of the notice in the form prescribed by the
commissioner regarding the duties of employers under this section. During the first two years that any person, firm or corporation is doing business in this state in construction work, or in the severance, production or transportation of minerals, such person, firm or corporation shall on or before the first day of February, May, August and November of each calendar year file with the department a verified statement of the number of employees, or a copy of the quarterly premium report filed with the workers' compensation fund showing the accurate number of employees, unless the commissioner waives the filing of the report upon his determination that the person, firm or corporation is of sufficient stability that the reporting is unnecessary.

(g) Termination of bond. — The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least five consecutive years and has paid all wages and fringe benefits. The approval of the commissioner will be granted only after the commissioner has determined that the wages and fringe benefits of all employees have been paid. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

§21-5-15. Violations; criminal penalties.

(a) Any person, firm or corporation who knowingly and willfully fails to provide and maintain an adequate bond as required by section fourteen of this article 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 month, or both fined and imprisoned.

(b) Any person, firm or corporation who knowingly, willfully and fraudulently disposes of or relocates assets
with intent to deprive employees of their wages and fringe benefits is guilty of a felony, and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than thirty thousand dollars, or imprisoned in the penitentiary not less than one nor more than three years, or both fined and imprisoned.

(c) At any time the commissioner determines that a person, firm or corporation has not provided or maintained an adequate bond, as required by section fourteen of this article, the commissioner shall cause a cease and desist order to be issued and posted requiring that said person, firm or corporation either post an adequate bond or cease further operations in this state within a period specified by the commissioner of not less than five nor more than fourteen days. Any person, firm or corporation who continues to engage in construction work or the severance, production or transportation of minerals without an approved bond after specified period shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than thirty thousand dollars, or imprisoned in the penitentiary not less than one nor more than three years, or both fined and imprisoned.

§21-5-16. Contractors and subcontractors to notify commissioner.

Whenever a person, firm or corporation (hereinafter referred to in this section as "the prime contractor") contracts or subcontracts with an employer and such contract or subcontract contemplates the performance of either construction work or the severance, production or transportation (excluding railroads or water transporters) of minerals or any combination of the foregoing, then the prime contractor shall, within ten days next following the execution of such contract or subcontract, notify the commissioner in writing by certified mail, return receipt requested, of such contract, which notice shall include the employee's name, the location of the job site and the employer's principal business location: Provided, That if it is ascertained by the prime contractor from the commissioner that the commissioner has obtained the information required to be included in
such notice from another agency of this state, then the
ing the filing of such notice by the prime contractor shall not
be required. If the prime contractor is a firm, corpora-
tion or association, then any and all of the officers of
such firm, corporation or association shall be responsible
to see to the proper notification required by this section.
If any prime contractor fails to give the notice required
by this section when required to do so, such prime
contractor is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than five
hundred dollars nor more than five thousand dollars.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND
RECLAMATION ACT.

§22A-3-7. Notice of intention to prospect, requirements
therefor; bonding; commissioner's authority
to deny or limit; postponement of reclama-
tion; prohibited acts; exceptions.

(a) Any person intending to prospect for coal in an
area not covered by a surface-mining permit, in order
to determine the location, quantity or quality of a
natural coal deposit, making feasibility studies or for
any other purpose, shall file with the commissioner, at
least fifteen days prior to commencement of any
disturbance associated with prospecting, a notice of
intention to prospect, which notice shall include a
description of the prospecting area, the period of
supposed prospecting and such other information as
required by rules or regulations promulgated pursuant
to this section: Provided, That prior to the commence-
ment of such prospecting, the commissioner may issue
an order denying or limiting permission to prospect
where he finds that prospecting operations will damage
or destroy a unique natural area, or will cause serious
harm to water quality, or that the operator has failed
to satisfactorily reclaim other prospecting sites, or that
there has been an abuse of prospecting by previous
prospecting operations in the area.

(b) Notice of intention to prospect shall be made in
writing on forms prescribed by the commissioner and
shall be signed and verified by the applicant. The notice shall be accompanied by (1) a United States geological survey topographic map showing by proper marking the crop line and the name, where known, of the seam or seams to be prospected, and (2) a bond, or cash, or collateral securities or certificates of the same type and form and in the same manner as provided in section eleven of this article, in the amount of five hundred dollars per acre or fraction thereof for the total estimated disturbed area. If such bond is used, it shall be payable to the state of West Virginia and conditioned that the operator shall faithfully perform the requirements of this article as they relate to backfilling and revegetation of the disturbed area.

(c) Any person prospecting under the provisions of this section shall ensure that such prospecting operation is conducted in accordance with the performance standards in section twelve of this article for all lands disturbed in explorations, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(d) Information submitted to the commissioner pursuant to this section as confidential, concerning trade secrets or privileged commercial or financial information, which relates to the competitive rights of the person or entity intended to prospect the described area, shall not be available for public examination.

(e) Any person who conducts any prospecting activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of sections sixteen and seventeen of this article.

(f) No operator shall remove more than two hundred and fifty tons of coal without the specific written approval of the commissioner, which may be granted only after the commissioner has ascertained compliance pursuant to subsection (g), section eight of this article.

(g) The bond accompanying said notice of intention to prospect shall be released by the commissioner when the operator demonstrates that a permanent species of vegetative cover is established.
(h) In the event an operator desires to mine the area currently being prospected, and has requested and received an appropriate surface mine application (S.M.A.) number, the commissioner may permit the postponement of the reclamation of the area prospected. Any part of a prospecting operation, where reclamation has not been postponed as provided above, shall be reclaimed within a period of three months from disturbance.

(i) For the purpose of this section, the word “prospect” or “prospecting” does not include core drilling related solely to taxation or highway construction.

CHAPTER 74
(S. B. 218—By Senators Chernenko, Manchin, Harman, Warner, Whitlow, Jarrell, Wolfe and Boley)
[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to employers prohibited from discharging employees for time lost as volunteer firemen; civil penalty; limitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

No employer may terminate an employee who is a member of a volunteer fire department and who, in the line of emergency duty as a volunteer fireman, responds to an emergency call prior to the time he is due to report for work and which emergency results in a loss of time from his employment.
Any time lost from employment as provided in this section may be charged against the employee's regular pay.

At the request of an employer, any employee losing time as provided herein shall supply his employer with a statement from the chief of the volunteer fire department stating that the employee responded to an emergency call and the time thereof.

As used in this section, "emergency" shall mean going to or coming from an actual fire to prevent the imminent loss of life or property. The term "employer" includes any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to any employee.

Any employer who willfully and knowingly violates the provisions of this section shall be required to reinstate such employee to his former position and shall be required to pay such employee all lost wages and benefits for the period between termination and reinstatement. Any action to enforce the provisions of this section shall be commenced within a period of one year after the date of violation and such action shall be commenced in the circuit court of the county wherein the place of employment is located.

*CHAPTER 75
(S. B. 748—Originating in the Senate Committee on the Judiciary)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifteen and fifteen-a, article three, chapter twenty-nine-a of the Code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section fifteen-b; to amend and reenact sections eleven (one-a) (one), eleven (ten) (five), sixteen (one) (seven), seventeen-a (two) (nine), nineteen (sixteen-b) (four), twenty (one) (seven), twenty (five-a) (three), twenty (five-c) (six), twenty (five-e) (six),

*Clerk's Note: The provisions contained in this act were subsequently amended by S. B. 761, (Ch. 76) which passed May 13, 1987.
twenty-seven (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), thirty (six) (three) and thirty-three (two) (ten), article two, chapter sixty-four of said code; and that said article be further amended by adding thereto twenty-two new sections, designated sections five-e (one) (five), eleven (one-a) (twenty-nine-a), eleven (twelve) (twenty-four), sixteen (three-a) (two), sixteen (five) (three), sixteen (five-b) (eight), sixteen (twenty-nine-a) (five), nineteen (one-a) (three), nineteen (one-a) (four), twenty (two) (twelve), twenty (two) (twenty-three-a), twenty (five) (five), twenty-two (one) (thirteen), twenty-two (one) (sixteen), twenty-two (nine) (six), twenty-two-a (three) (forty), twenty-nine (six) (ten), thirty (seven-a) (five), thirty-one-a (eight-b) (five), thirty-three (thirty) (fifteen), forty-six-a (six) (one hundred three) and forty-six-a (seven) (one hundred two), all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; providing that emergency rules promulgated by the secretary of state be reviewed by and may be disapproved by the attorney general; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of 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-seven; authorizing the West Virginia industrial and trade jobs development corporation to promulgate certain legislative rules relating to the general administration of the West Virginia capital company act and to the establishment of application procedures to implement the act as modified; authorizing the state tax
commissioner to promulgate certain legislative rules relating to a listing of interests in natural resources for the first statewide reappraisal and providing for penalties; authorizing the state tax commissioner to promulgate certain legislative rules relating to the review of appraisals by county commissions sitting as administrative appraisal review boards as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to review of reappraisals by a circuit court on certiorari as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to the administrative review of appeals by the state tax commissioner as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to the additional review and implementation of property reappraisals as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to providing guidelines for assessors to assure fair and uniform property values; authorizing the state tax commissioner to promulgate certain legislative rules relating to business and occupation taxes as modified; authorizing the state tax commissioner to promulgate certain legislative rules governing the registration of transient vendors as modified; authorizing the state board of health to promulgate certain legislative rules relating to establishing methods and standards for chemical tests for intoxication as modified; authorizing the director of the department of health to promulgate certain legislative rules governing the hazardous material treatment information repository as modified; authorizing the state board of health to promulgate certain legislative rules relating to vital statistics as modified; authorizing the state board of health to promulgate certain legislative rules governing hospital licensure and relating to allowing hospitals to have licensed health care professionals, other than licensed physicians, on their staff, as modified; authorizing the state board of health to promulgate certain legislative rules governing hospital licensure as modified; authorizing the West Virginia hospital finance authority to promulgate certain legislative rules governing the
establishment of fee schedule and cost allocation applicable to issuance of bonds by West Virginia hospital finance authority as modified; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to the seizure of a driver's license and the issuance of a temporary driver's license as modified; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to a federal safety standards inspection program as modified; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to ginseng as modified; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to the West Virginia pesticide use and application act as modified; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to the WV/NPDES program for coal mines and preparation plants and the refuse and waste therefrom with certain amendments thereto; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to procedures for transporting and dealing in furbearing animals; authorizing the commercial whitewater advisory board to promulgate certain legislative rules relating to commercial whitewater outfitters as modified; authorizing the water resources board to promulgate certain legislative rules relating to water quality standards as modified; authorizing the water resources board to promulgate certain legislative rules relating to the state national pollutant discharge elimination system (NPDES) program as modified; authorizing the water resources board to promulgate certain legislative rules relating to special regulations; authorizing the water resources board to promulgate certain legislative rules relating to the underground injection control program; authorizing the water development authority to promulgate certain legislative rules relating to requirements governing disbursement of loans and grants to governmental agencies for the acquisition or construction of water development projects; authorizing the director of the department of natural resources to promulgate certain legislative rules
relating to hazardous waste management as modified; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to hazardous waste management; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to hazardous waste management which were filed in the state register on the fifth day of March, one thousand nine hundred eighty-seven, which rules modify the previously filed rules entitled "Hazardous Waste Management, Series 35"; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing oil and gas wells and other wells as modified; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing certification of gas wells; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing underground injection control as modified; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing the state national pollutant discharge elimination system (NPDES) program as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing miscellaneous water pollution control; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing dam control as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing solid waste management as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing hazardous waste management as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing the state national pollutant discharge elimination system (NPDES) for mines and minerals as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules relating to the standards for certification of coal
mine electricians as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing the safety training program for prospective underground coal miners in West Virginia; authorizing the commissioner of the department of energy to promulgate legislative rules governing the safety training program for prospective surface coal miners in West Virginia; authorizing the state board of health to promulgate certain legislative rules relating to the licensure of behavioral health centers as modified; authorizing the state fire commission to promulgate certain legislative rules relating to the hazardous substance emergency response training program as modified; authorizing the civil service commission to promulgate certain legislative rules governing the civil service system as modified; authorizing the West Virginia board of embalmers and funeral directors to promulgate certain legislative rules relating to the governing of the board of embalmers and funeral directors as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing policies relating to licensure of the licensed practical nurse as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing legal standards of nursing practice for the licensed practical nurse; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing fees for services rendered by the board; authorizing the commissioner of banking to promulgate certain legislative rules implementing the West Virginia community reinvestment act as modified; authorizing the insurance commissioner to promulgate certain legislative rules relating to examiners' compensation, qualification and classification as modified; authorizing the state board of risk and insurance management to promulgate certain legislative rules governing the mine subsidence insurance program as modified; authorizing the attorney general to promulgate certain legislative rules relating to the prevention of unfair or deceptive acts or practices in home
improvement and home construction transactions as modified; and authorizing the attorney general to promulgate certain legislative rules relating to the prevention of unfair or deceptive acts or practices in the sale of damaged goods or products as modified.

Be it enacted by the Legislature of West Virginia:

That sections fifteen and fifteen-a, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section fifteen-b; that sections eleven (one-a) (one), eleven (ten) (five), sixteen (one) (seven), seventeen-a (two) (nine), nineteen (sixteen-b) (four), twenty (one) (seven), twenty (five-a) (three), twenty (five-c) (six), twenty (five-e) (six), twenty-seven (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), thirty (six) (three) and thirty-three (two) (ten), article two, chapter sixty-four of said code, as amended, be amended and reenacted; and that said article two be further amended by adding thereto twenty-two new sections, designated sections five-e (one) (five), eleven (one-a) (twenty-nine-a), eleven (twelve) (twenty-four), sixteen (three-a) (two), sixteen (five) (three), sixteen (five-b) (eight), sixteen (twenty-nine-a) (five), nineteen (one-a) (three), nineteen (one-a) (four), twenty (two) (twelve), twenty (two) (twenty-three-a), twenty (five) (five), twenty-two (one) (thirteen), twenty-two (one) (sixteen), twenty-two (nine) (six), twenty-two-a (three) (forty), twenty-nine (six) (ten), thirty (seven-a) (five), thirty-one-a (eight-b) (five), thirty-three (thirty) (fifteen), forty-six-a (six) (one hundred three) and forty-six-a (seven) (one hundred two), all to read as follows:

Chapter
29A. State Administrative Procedures.
64. Legislative Rules.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

ARTICLE 3. RULE MAKING.


§29A-3-15a. Disapproval of emergency rules by the secretary of state; judicial review.

§29A-3-15b. Disapproval of emergency rules by the attorney general; judicial review.
§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, or the attorney general, acting under the authority provided for in section fifteen-b 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 provision 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, by any agency, except for the secretary of state,
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 disap-
proved. An emergency rule filed by the secretary of
state shall be reviewed by the attorney general as
provided for in section fifteen-b of this article.

(b) The secretary of state shall disapprove an emer-
gency 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
26 rule should be disapproved, he may make further
27 investigation, including, but not limited to, requiring
28 the agency or other interested parties to submit
29 additional information or comment or fixing a date,
30 time and place for the taking of evidence on the issues
31 involved in making a determination under the provi-
32 sions of this section.
33
34 (d) The determination of the secretary of state shall
35 be reviewable by the supreme court of appeals under its
36 original jurisdiction, based upon a petition for a writ of
37 mandamus, prohibition or certiorari, as appropriate.
38 Such proceeding may be instituted by:
39
40 (1) The agency which promulgated the emergency
41 rule;
42
43 (2) A member of the Legislature; or
44
45 (3) Any person whose personal property interests will
46 be significantly affected by the approval or disapproval
47 of the emergency rule by the secretary of state.

§29A-3-15b. Disapproval of emergency rules by the
attorney general; judicial review.

1 (a) Upon the filing of an emergency rule by the
2 secretary of state under the provisions of section fifteen
3 of this article, the attorney general shall review such
4 rule and, within forty-two days of such filing, shall issue
5 a decision as to whether or not such emergency rule
6 should be disapproved.

7 (b) The attorney general shall disapprove an emer-
8 gency rule if he determines:

9 (1) That the secretary of state has exceeded the scope
10 of its statutory authority in promulgating the emer-
11 gency rule;

12 (2) That an emergency does not exist justifying the
13 promulgation of the rule; or

14 (3) That the rule was not promulgated in compliance
15 with the provisions of section fifteen of this article.

16 (c) If the attorney general determines, based upon the
17 contents of the rule or the supporting information filed
by the secretary of state, that the emergency rule should
be disapproved, he may disapprove such rule without
further investigation, notice or hearing. If, however, the
attorney general concludes that the information submit-
ted by the secretary of state 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 secretary of state 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 attorney general 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 secretary of state;
(2) A member of the Legislature; or
(3) Any person whose personal property interests will
be significantly affected by the approval or disapproval
of the emergency rule by the attorney general.

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PRO-
MULGATE LEGISLATIVE RULES.

§64-2-5e(1)(5). West Virginia industrial and trade jobs development
corporation.
§64-2-16(3a)(2). Director of health.
§64-2-16(29a)(5). West Virginia hospital finance authority.
§64-2-19(1a)(3). Division of forestry; department of agriculture.
§64-2-19(1a)(4). Division of forestry; department of agriculture.
§64-2-20(1)(7). Department of natural resources.
§64-2-20(2)(12). Director of the department of natural resources.
§64-2-20(2)(23a) Department of natural resources; commercial whitewater advisory board.

§64-2-20(5)(5). Water resources board.
§64-2-20(5a)(3). Water resources board.
§64-2-20(5c)(6). Water development authority.
§64-2-20(5e)(6). Department of natural resources.

§64-2-22(1)(13). Department of energy; director of the division of oil and gas.

§64-2-22(9)(6). Commissioner of the department of energy.
§64-2-22a(3)(40). Commissioner of the department of energy.
§64-2-29(3)(5). State fire commission.
§64-2-29(6)(10). Civil service commission.
§64-2-30(6)(3). Board of embalmers and funeral directors.
§64-2-30(7a)(5). West Virginia board of examiners for licensed practical nurses.

§64-2-31a(8b)(5). Commissioner of banking.

§64-2-5e(1)(5). West Virginia industrial and trade jobs development corporation.

1 The legislative rules filed in the state register on the fifteenth day of October, one thousand nine hundred eighty-six, modified by the West Virginia industrial and trade jobs development corporation to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, one thousand nine hundred eighty-seven, relating to the West Virginia industrial and trade jobs development corporation (general administration of the West Virginia capital company act and establishment of application procedures to implement the act), are authorized.


1 (a) The legislative rules filed in the state register on the twelfth day of March, one thousand nine hundred eighty-five, relating to the state tax commissioner (identification and appraisal of farmland subsequent to the base year of statewide reappraisal) are authorized.
and directed to be promulgated with the following amendments:

Title page, Subject; following the word "Farmland," insert the words "and of Structures Situated Thereon."

Page i, Subject; following the word "Farmland," insert the words "and of Structures Situated Thereon."

Page i, TABLE OF CONTENTS, Section 10; following the words "Valuation of Farmland" add the words "and of Structures Situated Thereon."

Page 10.1, Title; following the word "FARMLAND" insert the words "AND STRUCTURES SITUATED THEREON."

Page 10.1, Section 10, Title; following the word "Farmland" add the words "and Structures Situated Thereon."

Page 10.1, Section 10.01(b); following the word "farmland" insert the words "and structures situated thereon."

Page 10.2, Section 10.02(a), first sentence; following the word "farmland" insert the words "and structures situated thereon."

Page 10.3, Section 10.02(b), first sentence; following the word "farmland" insert the words "and structures situated thereon."

Page 10.3, Section 10.02(b), last sentence; following the word "farmland" insert the words "and structures situated thereon."

Page 10.8, Section 10.04(5)(B), last sentence; delete the period and add "or the incapability to be adapted to alternative uses."

Page 10.9, Section 10.04(6), first sentence; following the words "land currently being used" insert the words "as part of a farming operation, ."

Page 10.9, Section 10.04(6), following the last sentence; add the sentence "For the purposes of this
definition, 'contiguous tracts' are farmlands which are in
close proximity, but not necessarily adjacent: Provided,
That all such contiguous tracts are operated as part of
the same farm management plan."

Page 10.10, Section 10.04(8), is amended to read in its
entirety as follows:

"(8) Farm buildings.—The term 'farm buildings' shall
mean structures which directly contribute to the
operation of the farm, and shall include tenant houses
and quarters furnished farm employees without rent as
a part of the terms of their employment."

Page 10.11, Section 10.04; delete the word "No-
vember" and insert in lieu thereof the word "Sep-
tember." Delete the period following the word "valua-
tion" and add the words "for the assessment year
beginning July first of each year."

Page 10.11, Section 10.04, insert the following
subdivision; "(12) Application Form: The application
form required to be filed with the assessor on or before
September first of each year shall require certification
that the farm complies with criteria set forth in Section
10.05(c) of these regulations, and renewal applications
from year to year shall be sufficient upon statement
certifying that no change has been made in the use of
farm property which would disqualify 'farm use'
classification for assessment purposes." Renumber the
subdivisions of Section 10.04 following the new
10.04(12); formerly 10.04(12) through 10.04(28), to
10.04(13) through 10.04(29) respectively.

Page 10.14, Section 10.04(28) (formerly 10.04(27));
following the words "woodland products" insert a
comma and the words "such as nuts or fruits harvested"
and add a comma following the words "human consump-
tion" on Page 10.15.

Page 10.16, Section 10.05, subsection (a), following the
words "land is used for farm purposes" by striking the
period and inserting in lieu thereof a colon and the
following: "Provided, That the true and actual value of
all farms used, occupied and cultivated by their owners
or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: Provided, however, That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations."

Page 10.16, Section 10.05(b), first clause; following the words "following factors shall be" insert the words "indicative of but not conclusive" and delete the word "considered."

Page 10.16, Section 10.05(b)(2); delete the period and add the words "such as soil conservation, farmland preservation or federal farm lending agencies."

Page 10.17, Section 10.05(b)(7); delete the section and insert in lieu thereof the words "(7) Whether or not the farmer practices 'custom farming' on the land in question."

Page 10.17, Section 10.05(b)(9); following the word "type" add a comma and insert the word "utility."

Page 10.17, Section 10.05(b)(11), first sentence; following the word "sales" insert the words "for nonfarm uses."

Page 10.17, Section 10.05(b)(12)(A); following the words "part of" insert the words "or appurtenant to."

Page 10.17, Section 10.05(b)(12)(B); following the words "contiguous to" insert the words "or operated in common with."

Page 10.18, Section 10.05, subsection (c), the first sentence of which is amended in its entirety to read as follows: "Qualifying farmland and the structures situated thereon shall be subject to farm use valuation, with primary consideration being given to the income which the property might be expected to earn, in the locality wherein situate, if rented."
Page 10.18, Section 10.05(b)(12)(B); delete the semicolons and the words "it was purchased at the same time as the tract so used." Delete the period following the word "purposes" and add the words "or any nonfarm use."

Page 10.19, Section 10.05(c)(2); following the words "Provided, That no" delete the word "reason" and insert in lieu thereof the words "individual event."

Page 10.20, Section 10.05(c)(4)(C); following the words "(1,000) minimum production value" insert the words "or the small farm five hundred dollars ($500) minimum production and sale."

Page 10.23, Section 10.05(d)(3)(B), third sentence; following the word "If" insert the words "timber from."

Page 10.26, Section 10.05(f)(2) is amended in its entirety to read as follows:

"(2) Farm buildings.—Rental value of farm buildings and other improvements on the farmland shall be valued by determining the replacement cost of the building or structure by usual farm construction practices, and farm labor standards and subtracting therefrom depreciation.¹ Both of these determinations shall be made in accordance with the tax department's real property appraisal manual² as filed in the state register in accordance with chapter 29A of the code of West Virginia, 1931, as amended, and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm-use valuation based on the highest class of farmland present on the farm."

Page 10.28, Section 10.05(f)(3)(B)(1); following the words "or more of the" insert the word "usual."
Page 10.28, Section 10.05(f)(3)(B)(2); following the words "(50%) of the" insert the word "usual."

Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the words "(50%) or more of the" insert the word "usual."

Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the words "(50%) of the" insert the word "usual."

Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the last sentence insert the sentence "An individual employed other than in farming is not an unincorporated business."

Page 10.35, Section 10.07, Title; following the word "Farmland" insert the words "and Structures Situated Thereon."

Page 10.35, Section 10.07(a), first sentence; following the word "farmland" insert the words "and structures situated thereon."

Page 10.46, Subject; following the word "Farmland" insert the words "and Structures Situated Thereon."

(b) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, relating to the state tax commissioner (listing of interests in natural resources for the first statewide reappraisal; provision for penalties) are authorized.

(c) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by county commissions sitting as administrative appraisal review boards), are authorized.

(d) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twelfth day of February, one thousand
nine hundred eighty-seven, relating to the state tax
commissioner (review of appraisals by a circuit court on
certiorari), are authorized with the following
amendment:

On page 3, §18.3.1 is stricken in its entirety and a new
§18.3.1 is inserted in lieu thereof to read as follows:

"18.3.1 Who May Request Review.—The property
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. Parties to the
proceeding wherein review by the circuit court is sought
shall pay costs and fees as they are incurred: Provided,
That the circuit court upon rendering judgment or
making any order may award costs to any party in
accordance with the provisions of W. Va. Code §53-3-5."

(e) The legislative rules filed in the state register on
the twenty-sixth day of March, one thousand nine
hundred eighty-six, modified by the state tax commis-
ioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twelfth day of February, one thousand
nine hundred eighty-seven, relating to the state tax
commissioner (administrative review of appraisals by
the state tax commissioner), are authorized.

(f) The legislative rules filed in the state register on
the eighteenth day of August, one thousand nine
hundred eighty-six, modified by the state tax commis-
ioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twelfth day of February, one thousand
nine hundred eighty-seven, relating to the state tax
commissioner (additional review and implementation of
property appraisals), are authorized.


1 The legislative rules filed in the state register on the
2 eleventh day of August, one thousand nine hundred

(a) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four, relating to the state tax commissioner (estimated personal income tax), are authorized with the amendments set forth below:

55.02(a)(2)(on page 182.2) line 18, after the word "profession" strike the words "on his own account" and the comma(,).

55.12(b)(1)(page 182.35) at the end of the section, change the period to a comma, and add the following language: "and in the case of a court appointed agent, a copy of the court order of appointment is sufficient."

55.12(c)(page 182.36) after the word "for", strike the word "errorneous".

(b) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of November, one thousand nine hundred eighty-four, and on the twenty-first day of March, one thousand nine hundred eighty-five, relating to the state tax commissioner (estimated corporation net income tax), are authorized.

(c) The legislative rules filed in the state register on the fourth day of February, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objection of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-seven, relating to the state tax commissioner (business and occupation tax) are authorized.


The legislative rules filed in the state register on the
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2 eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of December, one thousand nine hundred eighty-six, relating to the state tax commissioner (registration of transient vendors), are authorized.


1 (a) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (waste water treatment works operations), are authorized.

2 (b) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (laboratory reporting of syphilis and gonorrhea) are authorized.

3 (c) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (public water supply operators) with the modification of §11.02 as presented to the legislative rule-making review committee on the ninth day of November, one thousand nine hundred eighty-two, are authorized.

4 (d) The legislative rules filed in the state register on the twenty-second day of October, one thousand nine hundred eighty-two, relating to the state board of health (sewage systems) with the modification presented to the legislative rule-making review committee on the sixth day of December, one thousand nine hundred eighty-two, are authorized except lines ten through seventeen, page eight of the rules, shall be stricken in their entirety and the remaining paragraphs renumbered. These rules were proposed by the state board of health pursuant to sections seven and nine, article one, chapter sixteen of this code.

5 (e) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health
(approval of laboratories), are authorized. These rules were proposed by the state board of health pursuant to section one, article seven, chapter sixteen and section six-a, article one, chapter forty-eight of this code.

(f) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, and filed with amendments on the eleventh day of January, one thousand nine hundred eighty-three, relating to the state board of health (nursing home licensure), are authorized with the amendment of §5.15.02 of those rules as set forth below:

By striking the word “and” at the end of subdivision (f), by changing the period at the end of subdivision (g) to a semicolon, and by adding the following after subdivision (g): “(h) one (1) member who represents social work services.”

These rules were proposed by the state board of health pursuant to section seven, article one, chapter sixteen and section three, article five-c, chapter sixteen of this code.

(g) The legislative rules filed in the state register on the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (trauma center or facility designation), are authorized.

(h) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-three, relating to the state board of health (well water regulations) are authorized with the amendments set forth below:

§4.1. In the first sentence delete the word “obtaining” and insert in lieu thereof the words “applying for.” In the second sentence after “4.3” add “and 4.5.”

§4.2. At the end of the second sentence, strike the period and add the words “unless emergency conditions prevail as noted under §4.3.”

With the balance of §4.2 and create a new §4.3 with the following changes: In the first sentence delete the word “deadline” and insert in lieu thereof the word
“requirements.” Add after the first sentence the sentence, “Emergency conditions and unavoidable circumstances are those conditions involving acts of God, water outages or disruption of water service, unsatisfactory water quality or quantity or public health threats.” In the third sentence delete the word “exceed” and insert in lieu thereof the words “be made in excess of.”

Renumber §4.3 as §4.4 and add the following two sentences at the end of the section: “Such standards shall constitute the minimum standards for the installation, the alteration or the deepening of water wells. Any plans approved by the director pursuant to these regulations shall be in substantial compliance with the heretofore mentioned standards.”

Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7 as §4.8 and §4.8 as §4.9.

§5.2. Delete the words “four(4)” and insert in lieu thereof the words “two(2)” and delete the words “active, continuous.”

(i) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (procedures for recovery of corneal tissue for transplant) are authorized.

(j) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the state board of health (reportable diseases) are authorized.

(k) The legislative rules filed in the state register on the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (retail food store sanitation) are authorized.

(l) The legislative rules filed in the state register on the seventeenth day of July, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, one thousand nine hundred eighty-six, relating to the state board of health (methods
and standards for chemical tests for intoxication) are authorized.

§64-2-16(3a)(2). Director of health.

The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-six, modified by the director of the department of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth of October, one thousand nine hundred eighty-six, relating to the director of the department of health (hazardous material treatment information repository) are authorized.


The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (vital statistics) are authorized.


(a) The legislative rules filed in the state register on the eighteenth day of April, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, one thousand nine hundred eighty-six, relating to the state board of health (hospital licensure) are authorized.

(b) The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (hospital licensure and allowing hospitals to have licensed hospital professionals, other than licensed physicians, on their medical staff) are authorized.
§64-2-16(29a)(5). West Virginia hospital finance authority.

The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-six, modified by the West Virginia hospital finance authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-seven, relating to the West Virginia hospital finance authority (establishment of fee schedule and cost allocation applicable to issuance of bonds) are authorized.


(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 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.

(d) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, 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 ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (seizure of a driver's license and issuance of a temporary driver's license), are authorized.

(e) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, 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 ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (federal safety standards inspection program) are authorized.

§64-2-19(1a)(3). Division of forestry; department of agriculture.

The rules authorized by the Legislature in section nineteen (one-a) (four) of this article were also proposed by the commissioner of agriculture pursuant to section three, article one-a, chapter nineteen of this code.

§64-2-19(1a)(4). Division of forestry; department of agriculture.

The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the director of the division of forestry of the department of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred eighty-seven, relating to the director of the division of forestry of the department of agriculture (ginseng), are authorized.
These rules were proposed by the director of the division of forestry of the department of agriculture pursuant to sections three and four, article one-a, chapter nineteen of the code.


(a) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (use of certain picloram products), are authorized.

(b) The legislative rules filed in the state register on the eighteenth day of June, 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 fifth day of January, one thousand nine hundred eighty-seven, relating to the commissioner of agriculture (West Virginia pesticide use and application act), 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.

(c) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-six, relating to the department of natural resources (WV/NPDES program for coal mines and preparation plants, and the refuse and waste therefrom), are authorized with the amendments set forth below:

On page four, §1.9.1.a by inserting the words "five
§64-2-20(2)(12). Director of the department of natural resources.

The legislative rules filed in the state register on the seventh day of August, one thousand nine hundred eighty-six, relating to the director of the department of natural resources (procedures for transporting and dealing in furbearing animals), are authorized.

§64-2-20(2)(23a). Department of natural resources; commercial whitewater advisory board.

The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-six, modified by the commercial whitewater advisory board to meet the objections of the legislative rule-making review committee and refiled in the state register on sixteenth day of January, one thousand nine hundred eighty-seven, relating to the commercial whitewater advisory board (commercial whitewater outfitters), are authorized with the following amendments:

"On page 1, §2.1, by striking all of §2.1 and inserting in lieu thereof the following: '2.1 Commercial whitewater outfitter means any person, partnership, corporation or other organization, or any combination thereof, duly authorized and operating from within or from without the state, which for monetary profit or gain, provides whitewater expeditions or rents whitewater craft or equipment for use in whitewater expeditions on any river, portions of rivers or waters of the state.'"

§64-2-20(5)(5). Water resources board.

The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources
board to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-fourth day of February, one
thousand nine hundred eighty-seven, relating to the
state water resources board (special regulations) are
authorized. These rules were proposed by the state
water resources board pursuant to section three, article
five-a, and section five, article five, of chapter twenty
of this code.

§64-2-20(5a)(3). Water resources board.

(a) The legislative rules filed in the state register on
the sixth day of January, one thousand nine hundred
eighty-three, relating to the state water resources board
(underground injection control program), are
authorized.

(b) The legislative rules filed in the state register on
the fifteenth day of November, one thousand nine
hundred eighty-three, relating to the state water
resources board (special regulations), are authorized.

(c) The legislative rules filed in the state register on
the third day of August, one thousand nine hundred
eighty-three, relating to the state water resources board
(groundwater protection standards), are authorized.

(d) The legislative rules filed in the state register on
the fifteenth day of November, one thousand nine
hundred eighty-three, relating to the state water
resources board (state national pollutant discharge
elimination system (NPDES) program), are authorized.

(e) The Legislature hereby authorizes and directs the
state water resources board to promulgate rules relating
to water quality standards in exact conformity with the
rules relating to water quality standards tendered to the
secretary of state on the seventh day of March, one
thousand nine hundred eighty-four by the executive
secretary of the state water resources board, to be
received and filed for inclusion in the state register by
the secretary of state.

(f) The legislative rules filed in the state register on
the seventh day of January, one thousand nine hundred
eighty-five, modified by the water resources board 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 water resources board (water quality standards), are authorized.

(g) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred eighty-seven, and further modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (water quality standards), are authorized.

(h) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred eighty-seven, and further modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (state national pollutant discharge elimination system (NPDES) program), are authorized.

(i) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the
state water resources board (underground injection control program), are authorized.

(j) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (special regulations), are authorized. These rules were proposed by the state water resources board pursuant to section three, article five-a, and section five, article five, of chapter twenty of this code.

§64-2-20(5c)(6). Water development authority.

(a) The legislative rules filed in the state register on the thirtieth day of August, one thousand nine hundred eighty-four, relating to the water development authority (hardship grant funds), are authorized.

(b) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-six, relating to the water development authority (requirements governing disbursements of loans and grants to governmental agencies for the acquisition or construction of water development projects), are authorized.

§64-2-20(5e)(6). Department of natural resources.

(a) 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.
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53 (e) The legislative rules filed in the state register on
54 the fifth day of March, one thousand nine hundred
55 eighty-six, relating to the department of natural
56 resources (hazardous waste management), are
57 authorized.

58 (f) The legislative rules filed in the state register on
59 the tenth day of October, one thousand nine hundred
60 eighty-five, relating to the department of natural
61 resources (hazardous waste management: small quantity
62 generators and waste minimization certification), are
63 authorized with the amendments set forth below:

64 On page 1, §3.1.4b delete the word "or" in the reference
65 to "paragraph (g) or (j)" and insert in lieu thereof the
66 words "and, if applicable."

67 (g) The legislative rule filed in the state register on
68 the twenty-sixth day of September, one thousand nine
69 hundred eighty-six, modified by the department of
70 natural resources to meet the objections of the legislative
71 rule-making review committee and refiled in the state
72 register on the ninth day of December, one thousand
73 nine hundred eighty-six, relating to the department of
74 natural resources (hazardous waste management regu-
75 lations), are authorized.

76 (h) The legislative rule filed in the state register on
77 the ninth day of January, one thousand nine hundred
78 eighty-seven, relating to the department of natural
79 resources (hazardous waste management regulations),
80 are authorized.

81 (i) The legislative rule filed in the state register on the
82 fifth day of March, one thousand nine hundred eighty-
83 seven, relating to the department of natural resources
84 (hazardous waste management regulations, Series 35)
85 are authorized.

§64-2-22(1)(13). Department of energy; director of the
division of oil and gas.

1 (a) The legislative rules filed in the state register on
2 the eleventh day of August, one thousand nine hundred
3 eighty-six, modified by the director of the division of oil
4 and gas of the department of energy to meet the
objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (oil and gas wells and other wells), are authorized.

(b) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the oil and gas division of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (certification of gas wells), are authorized.

(c) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (underground injection control), are authorized.

(d) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (state national pollutant discharge elimination system (NPDES) program), are authorized.


(a) The legislative rules filed in the state register on
the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (miscellaneous water pollution control), are authorized.

(b) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (dam control), are authorized.

(c) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (solid waste management), are authorized.

(d) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (hazardous waste management), are authorized.

(e) The rules authorized by the Legislature in section twenty-two-a (three) (forty) of this article were also proposed by the commissioner of the department of energy pursuant to section sixteen, article one, chapter twenty-two of this code.
§64-2-22(9)(6). Commissioner of the department of energy.

(a) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (standards for certification of coal mine electricians), are authorized with the following amendments:

“Page one, §2.1, subsection (a), following the second word ‘electrician’ by striking the colon and inserting the following: ‘under the supervision required by section 4.1(d) of these rules’ and a colon.

Page one, §2.1, subsection (a), by deleting all of subdivision 6) and renumbering the subsequent subdivisions.

Page two, §2.1, subsection (a), by deleting all of subdivision 9).

Page two, §2.1, subsection (b), by deleting all of subdivision 14) and inserting in lieu thereof a new subdivision 14) to read as follows: ‘14) Replace blown fuses on trolley poles and nips.’

Page five, §4.1, subsection (d), line three, following the words ‘certified electrician prior’ by inserting the words ‘to any work being performed and again prior’.”

(b) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (safety training program for prospective underground coal miners in West Virginia), are authorized.

(c) The legislative rules filed in the state register on
the fifteenth day of December, one thousand nine
hundred eighty-six, modified by the commissioner of the
department of energy to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twenty-first day of January, one
thousand nine hundred eighty-seven, relating to the
commissioner of the department of energy (safety
training program for prospective surface coal miners in
West Virginia), are authorized.

§64-2-22a(3)(40). Commissioner of the department of
energy.

The legislative rules filed in the state register on the
twelfth day of January, one thousand nine hundred
eighty-seven, modified by the commissioner of the
department of energy 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-seven, relating to the
commissioner of the department of energy (state
national pollutant discharge elimination system
(NPDES) for mines and minerals), are authorized.


(a) The legislative rules filed in the state register on
the fourteenth day of November, one thousand nine
hundred eighty-three, relating to the state board of
health (licensure of behavioral health centers), are
authorized with the amendments set forth below:

Page 45, §12.8.2. In the first sentence delete the words
"without delay" and insert in lieu thereof the words
"within twenty-four hours after receiving a report of a
complaint."

(b) The legislative rules filed in the state register on
the twenty-first day of November, one thousand nine
hundred eighty-six, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-third day of December, one
thousand nine hundred eighty-six, relating to the state
The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-three and on the twenty-first day of November, one thousand nine hundred eighty-six and authorized by the Legislature in section twenty-seven (nine) (one) of this article were also proposed by the state board of health pursuant to section three, article seventeen, chapter twenty-seven of this code.

(a) The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state fire commission (state fire code) are authorized with the amendments set forth below:

Page 1, § 106, line 1, after the word add the words “personal care homes caring for five or less patients or”; and

Page 26, § 11.06(3)A.(3). Strike the period at the end of the sentence and add the words “except for existing sleeping rooms owned by the state and located in dormitories or state parks.”

(b) The legislative rules filed in the state register on the first day of August, one thousand nine hundred eighty-six, modified by the state fire commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred eighty-six, relating to the state fire commission (hazardous substance emergency response training program), are authorized.

The legislative rules filed in the state register on the nineteenth day of November, one thousand nine hundred eighty-six, modified by the civil service commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the
fifteenth day of December, one thousand nine hundred eighty-six, relating to the civil service commission (civil service system), are authorized.

§64-2-30(6)(3). Board of embalmers and funeral directors.

(a) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred eighty-four, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of embalmers and funeral directors (apprenticeship), are authorized.

(b) The legislative rules filed in the state register on the sixteenth day of October, one thousand nine hundred eighty-five, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of July, one thousand nine hundred eighty-six, relating to the board of embalmers and funeral directors (governing the board of embalmers and funeral directors), are authorized.

§64-2-30(7a)(5). West Virginia board of examiners for licensed practical nurses.

(a) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, modified by the West Virginia board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (policies relating to licensure of the licensed practical nurse), are authorized.

(b) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (legal standards
of nursing practice for the licensed practical nurse) are authorized.

(c) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (fees for services rendered by the board) are authorized.

§64-2-31a(8b)(5). Commissioner of banking.

The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-six, modified by the commissioner of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-six, relating to the commissioner of banking (implementing the West Virginia community reinvestment act), are authorized.


(a) The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-three, relating to the insurance commissioner (excess line brokers), are authorized.

(b) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the insurance commissioner to meet the objection of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, one thousand nine hundred eighty-six, relating to the insurance commissioner (examiners' compensation, qualification and classification), are authorized.


The legislative rules filed in the state register on the twenty-sixth day of November, one thousand nine hundred eighty-five, modified by the state board of risk and insurance management to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-six, relating to the state

(a) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-six, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred eighty-six, relating to the attorney general (prevention of unfair or deceptive acts or practices in home improvement and home construction transactions), are authorized. These rules were proposed by the attorney general pursuant to section one hundred three, article six and section one hundred two, article seven of chapter forty-six-a of this code with the following amendments:

"Amending the title to the proposed legislative rule wherever said title may appear, on lines three and four thereof, by striking the words 'and home construction'.

On the index page following '3.' by striking the words 'and home construction'.

On page 1, §1.2, line three, after the first word 'transactions' on line three, by striking the comma and the words 'and home construction transactions' and on line five, by striking the period and inserting the words 'but shall not cover new construction of single-family dwellings or rebuilding all or substantially all of an existing or preexisting single-family dwelling.'

Page 2, section 2.2 by striking all of lines seven and eight and inserting in lieu thereof the following:

'unless: (a) it appears in printed or typed face larger than the largest type used in the written contract, apart'.

On page 2, section 2.4, by striking all of section 2.4 and inserting in lieu thereof a new section 2.4, to read as follows:

'2.4 "Home Construction" means, for the purpose of this Rule, the repair, remodeling or the building of additions to existing single-family dwelling units,
including single-family homes, condominium units or any other dwelling unit to be used by any person primarily for personal or family use, but shall not include new single-family home construction or the rebuilding of all or substantially all of an existing or preexisting single-family dwelling.

Page 3, section 2.6, on line two thereof, after the second comma by inserting the word 'replacement'.

Page 3, section 3., by striking the words 'and home construction' from the section heading.

Page 3, section 3.1, lines one and two, by striking the words 'or home construction'.

Page 4, section 3.1.4, on lines one and two thereof, by striking the words 'or home construction'.

Page 4, section 3.1.8, on line two thereof, by striking the words 'or home construction'.

Page 4, section 3.1.9, on lines two and three thereof, by striking the words 'or home construction'.

Page 5, section 3.1.12, on lines one and two thereof, by striking the words 'or home construction'.

Page 6, section 3.1.26, by striking all of section 3.1.26 and renumbering the subsequent subsections.

Page 7, section 3.1.29, on lines one and two thereof, by striking the words 'or home construction'.

Page 7, section 3.1.29, on line six thereof, following the word 'contract' by inserting a period and striking the remainder of the section.

Page 7, following section 3.1.29 by adding a new section to be designated section 3.1.29, to read as follows:

'failed to file a certificate in the office of the Clerk of the County Commission in the county in which the principal place of business of the seller is located, setting forth the assumed name in or by which the business is being conducted in conformity with B the provisions of Chapter 47, Article 8, Section 2 of the Code of West Virginia, 1931, as amended.'

Page 7, section 3.2, on lines two and three thereof, by
striking the words, 'or home solicitation sale of home construction' and the comma on line three.

Page 9, section 4.1, on line eight thereof, by deleting the period and inserting the following:

'to the extent permitted by statute' and a period.

Page 10, section 4.2, on line 9 thereof, by striking the period and inserting the following:

'to the extent permitted by statute' and a period.'

(b) The legislative rules filed in the state register on the twenty-third day of September, one thousand nine hundred eighty-six, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred eighty-six, relating to the attorney general (prevention of unfair or deceptive acts or practices in the sale of damaged goods or products), are authorized. These rules were proposed by the attorney general pursuant to section one hundred three, article six and section one hundred two, article seven of chapter forty-six-a of the code.


The legislative rules authorized by the Legislature in section forty-six-a (six) (one hundred three) of this article were also proposed by the attorney general pursuant to section one hundred two, article seven, chapter forty-six-a of this code.

*CHAPTER 76
(S. B. 761—By Senators Tucker and Holmes)

[Passed May 13, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifteen and fifteen-a, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section fifteen-b; and to amend and reenact sections five-e (one) (five), eleven

*Clerk's Note: This act amends the provisions set forth in S. B. 748, (Ch. 75) which passed March 14, 1987.
(one-a) (one), eleven (one-a) (twenty-nine-a), eleven (ten) (five), eleven (twelve) (twenty-four), sixteen (one) (seven), sixteen (three-a) (two), sixteen (five) (three), sixteen (five-b) (eight), sixteen (twenty-nine-a) (five), seventeen-a (two) (nine), nineteen (one-a) (three), nineteen (one-a) (four), nineteen (sixteen-b) (four), twenty (one) (seven), twenty (two) (twelve), twenty (two) (twenty-three-a), twenty (five) (five), twenty (five-a) (three), twenty (five-c) (six), twenty (five-e) (six), twenty-two (one) (thirteen), twenty-two (one) (sixteen), twenty-two (nine) (six), twenty-three-a (three) (forty), twenty-seven (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), twenty-nine (six) (ten), thirty (six) (three), thirty (seven-a) (five), thirty-one-a (eight-b) (five), thirty-three (two) (ten), thirty-three (thirty) (fifteen), forty-six-a (six) (one hundred three) and forty-six-a (seven) (one hundred two), article two, chapter sixty-four of said code, all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; providing that emergency rules promulgated by the secretary of state be reviewed by and may be disapproved by the attorney general; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of 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-seven; authorizing the West Virginia industrial and trade jobs development corporation to promulgate certain legislative rules relating to the general administration of the West Virginia capital company act and to the establishment of application procedures to
implement the act as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to a listing of interests in natural resources for the first statewide reappraisal and providing for penalties; authorizing the state tax commissioner to promulgate certain legislative rules relating to the review of appraisals by county commissions sitting as administrative appraisal review boards as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to review of reappraisals by a circuit court on certiorari as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to the additional review and implementation of property reappraisals as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to providing guidelines for assessors to assure fair and uniform property values; authorizing the state tax commissioner to promulgate certain legislative rules relating to business and occupation taxes as modified; authorizing the state tax commissioner to promulgate certain legislative rules governing the registration of transient vendors as modified; authorizing the state board of health to promulgate certain legislative rules relating to establishing methods and standards for chemical tests for intoxication as modified; authorizing the director of the department of health to promulgate certain legislative rules governing the hazardous material treatment information repository as modified; authorizing the state board of health to promulgate certain legislative rules relating to vital statistics as modified; authorizing the state board of health to promulgate certain legislative rules governing hospital licensure and relating to allowing hospitals to have licensed health care professionals, other than licensed physicians, on their staff, as modified; authorizing the state board of health to promulgate certain legislative rules governing hospital licensure as modified; authorizing the West Virginia hospital finance authority
to promulgate certain legislative rules governing the establishment of fee schedule and cost allocation applicable to issuance of bonds by West Virginia hospital finance authority as modified; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to the seizure of a driver's license and the issuance of a temporary driver's license as modified; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to a federal safety standards inspection program as modified; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to ginseng as modified; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to the West Virginia pesticide use and application act as modified; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to the WV/NPDES program for coal mines and preparation plants and the refuse and waste therefrom with certain amendments thereto; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to procedures for transporting and dealing in furbearing animals; authorizing the commercial whitewater advisory board to promulgate certain legislative rules relating to commercial whitewater outfitters as modified; authorizing the water resources board to promulgate certain legislative rules relating to water quality standards as modified; authorizing the water resources board to promulgate certain legislative rules relating to the state national pollutant discharge elimination system (NPDES) program as modified; authorizing the water resources board to promulgate certain legislative rules relating to special regulations; authorizing the water resources board to promulgate certain legislative rules relating to the underground injection control program; authorizing the water development authority to promulgate certain legislative rules relating to requirements governing disbursement of loans and grants to governmental agencies for the acquisition or construction of water development projects; authorizing the director of the department of
natural resources to promulgate certain legislative rules relating to hazardous waste management as modified; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to hazardous waste management; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to hazardous waste management which were filed in the state register on the fifth day of March, one thousand nine hundred eighty-seven, which rules modify the previously filed rules entitled "Hazardous Waste Management, Series 35"; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing oil and gas wells and other wells as modified; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing certification of gas wells; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing underground injection control as modified; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing the state national pollutant discharge elimination system (NPDES) program as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing miscellaneous water pollution control; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing dam control as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing solid waste management as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing hazardous waste management as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing the state national pollutant discharge elimination system (NPDES) for mines and minerals as modified; authorizing the commissioner of the department of energy to promulgate certain legislative
rules relating to the standards for certification of coal mine electricians as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing the safety training program for prospective underground coal miners in West Virginia; authorizing the commissioner of the department of energy to promulgate legislative rules governing the safety training program for prospective surface coal miners in West Virginia; authorizing the promulgation of certain legislative rules and regulations relating to the standards for certification of underground belt examiners for underground coal mines; authorizing the state board of health to promulgate certain legislative rules relating to the licensure of behavioral health centers as modified; authorizing the state fire commission to promulgate certain legislative rules relating to the hazardous substance emergency response training program as modified; authorizing the civil service commission to promulgate certain legislative rules governing the civil service system as modified; authorizing the West Virginia board of embalmers and funeral directors to promulgate certain legislative rules relating to the governing of the board of embalmers and funeral directors as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing policies relating to licensure of the licensed practical nurse as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing legal standards of nursing practice for the licensed practical nurse; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing fees for services rendered by the board; authorizing the commissioner of banking to promulgate certain legislative rules implementing the West Virginia community reinvestment act as modified; authorizing the insurance commissioner to promulgate certain legislative rules relating to examiners’ compensation, qualification and classification as modified; authorizing the state board of risk and insurance management to promulgate certain legislative
rules governing the mine subsidence insurance program as modified; authorizing the attorney general to promulgate certain legislative rules relating to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions as modified; and authorizing the attorney general to promulgate certain legislative rules relating to the prevention of unfair or deceptive acts or practices in the sale of damaged goods or products as modified.

Be it enacted by the Legislature of West Virginia:

That sections fifteen and fifteen-a, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section fifteen-b; and that sections five-e (one) (five), eleven (one-a) (one), eleven (one-a) (twenty-nine-a), eleven (ten) (five), eleven (twelve) (twenty-four), sixteen (one) (seven), sixteen (three-a) (two), sixteen (five) (three), sixteen (five-b) (eight), sixteen (twenty-nine-a) (five), seventeen-a (two) (nine), nineteen (one-a) (three), nineteen (one-a) (four), nineteen (sixteen-b) (four), twenty (one) (seven), twenty (two) (twelve), twenty (two) (twenty-three-a), twenty (five) (five), twenty (five-a) (three), twenty (five-c) (six), twenty (five-e) (six), twenty-two (one) (thirteen), twenty-two (nine) (six), twenty-two-a (three) (forty), twenty-seven (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (one), thirty (seven-a) (five), thirty-one-a (eight-b) (five), thirty-three (two) (ten), thirty-three (thirty) (fifteen), forty-six-a (six) (one hundred three) and forty-six-a (seven) (one hundred two), article two, chapter sixty-four of said code be amended and reenacted, all to read as follows:

Chapter

29A. State Administrative Procedures.

64. Legislative Rules.

CHAPTER 29A.
STATE ADMINISTRATIVE PROCEDURES.

ARTICLE 3. RULE MAKING.

§29A-3-15. Emergency legislative rules; procedures for promulgation; definition.
§29A-3-15a. Disapproval of emergency rules by the secretary of state; judicial review.

§29A-3-15b. Disapproval of emergency rules by the attorney general; judicial review.

§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, or the attorney general, acting under the authority provided for in section fifteen-b 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 provision 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, by any agency, except for the secretary of state, 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. An emergency rule filed by the secretary of state shall be reviewed by the attorney general as provided for in section fifteen-b of this article.

(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 provi-
sions 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 property interests will
be significantly affected by the approval or disapproval
of the emergency rule by the secretary of state.

§29A-3-15b. Disapproval of emergency rules by the
attorney general; judicial review.

(a) Upon the filing of an emergency rule by the
secretary of state under the provisions of section fifteen
of this article, the attorney general 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 attorney general shall disapprove an emer-
gency rule if he determines:

(1) That the secretary of state has exceeded the scope
of its statutory authority in promulgating the emer-
gency 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 attorney general determines, based upon the contents of the rule or the supporting information filed by the secretary of state, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the attorney general concludes that the information submitted by the secretary of state 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 secretary of state 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 attorney general 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 secretary of state;

(2) A member of the Legislature; or

(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the attorney general.

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-5e(1)(5). West Virginia industrial and trade jobs development corporation.


§64-2-16(3a)(2). Director of health.


§64-2-16(29a)(5). West Virginia hospital finance authority.
§64-2-19(1a)(3). Division of forestry; department of agriculture.
§64-2-19(1a)(4). Division of forestry; department of agriculture.
§64-2-20(1)(7). Department of natural resources.
§64-2-20(9)(12). Director of the department of natural resources.
§64-2-20(2)(23a). Department of natural resources; commercial whitewater advisory board.
§64-2-20(5)(5). Water resources board.
§64-2-20(5a)(3). Water resources board.
§64-2-20(5c)(6). Water development authority.
§64-2-20(5e)(6). Department of natural resources.
§64-2-22(1)(13). Department of energy; director of the division of oil and gas.
§64-2-22(9)(6). Commissioner of the department of energy.
§64-2-22a(3)(40). Commissioner of the department of energy.
§64-2-29(3)(5). State fire commission.
§64-2-29(6)(10). Civil service commission.
§64-2-30(6)(3). Board of embalmers and funeral directors.
§64-2-30(7a)(5). West Virginia board of examiners for licensed practical nurses.
§64-2-31a(8b)(5). Commissioner of banking.

§64-2-5e(1)(5). West Virginia industrial and trade jobs development corporation.

The legislative rules filed in the state register on the fifteenth day of October, one thousand nine hundred eighty-six, modified by the West Virginia industrial and trade jobs development corporation to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, one thousand nine hundred eighty-seven, relating to the West Virginia industrial and trade jobs development corporation (general administration of the West Virginia capital company act and establishment of application procedures to implement the act), are authorized.

(a) The legislative rules filed in the state register on the twelfth day of March, one thousand nine hundred eighty-five, relating to the state tax commissioner (identification and appraisal of farmland subsequent to the base year of statewide reappraisal) are authorized and directed to be promulgated with the following amendments:

Title page, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon.”

Page i, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon.”

Page i, TABLE OF CONTENTS, Section 10; following the words “Valuation of Farmland” add the words “of Structures Situated Thereon.”

Page 10.1, Title; following the word “FARM LAND” insert the words “AND STRUCTURES SITUATED THEREON.”

Page 10.1, Section 10, Title; following the word “Farmland” add the words “and Structures Situated Thereon.”

Page 10.1, Section 10.01(b); following the word “farmland” insert the words “and structures situated thereon.”

Page 10.2, Section 10.02(a), first sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.3, Section 10.02(b), first sentence; following the word “farmland” insert the words “and structures situated thereon.” Delete the words “for purposes of the statewide reappraisal.”

Page 10.3, Section 10.02(b), last sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.8, Section 10.04(5)(B), last sentence; delete the period and add “or the incapability to be adapted to alternative uses.”
Page 10.9, Section 10.04(6), first sentence; following the words “land currently being used” insert the words “as part of a farming operation.”.

Page 10.9, Section 10.04(6), following the last sentence; add the sentence “For the purposes of this definition, ‘contiguous tracts’ are farmlands which are in close proximity, but not necessarily adjacent: Provided, That all such contiguous tracts are operated as part of the same farm management plan.”

Page 10.10, Section 10.04(8), is amended to read in its entirety as follows:

“(8) Farm buildings.—The term ‘farm buildings’ shall mean structures which directly contribute to the operation of the farm, and shall include tenant houses and quarters furnished farm employees without rent as a part of the terms of their employment.”

Page 10.11, Section 10.04; delete the word “November” and insert in lieu thereof the word “September.” Delete the period following the word “valuation” and add the words “for the assessment year beginning July first of each year.”

Page 10.11, Section 10.04, insert the following subdivision; “(12) Application Form: The application form required to be filed with the assessor on or before September first of each year shall require certification that the farm complies with criteria set forth in Section 10.05(c) of these regulations, and renewal applications from year to year shall be sufficient upon statement certifying that no change has been made in the use of farm property which would disqualify ‘farm use’ classification for assessment purposes.” Renumber the subdivisions of Section 10.04 following the new 10.04(12); formerly 10.04(12) through 10.04(28), to 10.04(13) through 10.04(29) respectively.

Page 10.14, Section 10.04(28) (formerly 10.04(27)); following the words “woodland products” insert a comma and the words “such as nuts or fruits harvested” and add a comma following the words “human consumption” on Page 10.15.
Page 10.16, Section 10.05, subsection (a), following the words "land is used for farm purposes" by striking the period and inserting in lieu thereof a colon and the following: "Provided, That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: Provided, however, That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations."

Page 10.16, Section 10.05(b), first clause; following the words "following factors shall be" insert the words "indicative of but not conclusive" and delete the word "considered."

Page 10.16, Section 10.05(b)(2); delete the period and add the words "such as soil conservation, farmland preservation or federal farm lending agencies."

Page 10.17, Section 10.05(b)(7); delete the section and insert in lieu thereof the words "(7) Whether or not the farmer practices 'custom farming' on the land in question."

Page 10.17, Section 10.05(b)(9); following the word "type" add a comma and insert the word "utility."

Page 10.17, Section 10.05(b)(11), first sentence; following the word "sales" insert the words "for nonfarm uses."

Page 10.17, Section 10.05(b)(12)(A); following the words "part of" insert the words "or appurtenant to."

Page 10.17, Section 10.05(b)(12)(B); following the words "contiguous to" insert the words "or operated in common with."

Page 10.18, Section 10.05, subsection (c), the first
sentence of which is amended in its entirety to read as
follows: "Qualifying farmland and the structures
situated thereon shall be subject to farm use valuation,
with primary consideration being given to the income
which the property might be expected to earn, in the
locality wherein situate, if rented."

Page 10.18, Section 10.05(b)(12)(B); delete the semicolons and the words "it was purchased at the same time
as the tract so used." Delete the period following the
word "purposes" and add the words "or any nonfarm
use."

Page 10.19, Section 10.05(c)(2); following the words
"Provided, That no" delete the word "reason" and insert
in lieu thereof the words "individual event."

Page 10.20, Section 10.05(c)(4)(C); following the words
"(1,000) minimum production value" insert the words
"or the small farm five hundred dollars ($500) minimum
production and sale."

Page 10.23, Section 10.05(d)(3)(B), third sentence;
following the word "If" insert the words "timber from."
Delete the period following the word "purpose" and add
the words "or is being converted to farm production
uses."

Page 10.26, Section 10.05(f)(2) is amended in its
entirety to read as follows:

"(2) Farm buildings.—Rental value of farm buildings
and other improvements on the farmland shall be valued
by determining the replacement cost of the building or
structure by usual farm construction practices, and
farm labor standards and subtracting therefrom
depreciation.1 Both of these determinations shall be
made in accordance with the tax department's real
property appraisal manual2 as filed in the state register
in accordance with chapter 29A of the code of West
Virginia, 1931, as amended, and as it relates to
agricultural buildings and structures. One (1) acre of
land shall be assigned to all buildings as a unit situate
on the property, regardless of the actual acreage
occupied by such buildings and shall be appraised at its
farm-use valuation based on the highest class of farmland present on the farm.”

Page 10.28, Section 10.05(f)(3)(B)(1); following the words “or more of the” insert the word “usual.”

Page 10.28, Section 10.05(f)(3)(B)(2); following the words “(50%) of the” insert the word “usual.”

Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the words “(50%) or more of the” insert the word “usual”.

Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the words “(50%) of the” insert the word “usual”.

Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the last sentence insert the sentence “An individual employed other than in farming is not an unincorporated business.”

Page 10.35, Section 10.07, Title; following the word “Farmland” insert the words “and Structures Situated Thereon.”

Page 10.35, Section 10.07(a), first sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.46, Subject; following the word “Farmland” insert the words “and Structures Situated Thereon.”

(b) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, relating to the state tax commissioner (listing of interests in natural resources for the first statewide reappraisal; provision for penalties) are authorized.

(c) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by county commissions sitting as administrative appraisal review boards), are authorized.
(d) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by a circuit court on certiorari), are authorized with the following amendment:

On page 3, §18.3.1 is stricken in its entirety and a new §18.3.1 is inserted in lieu thereof to read as follows:

"18.3.1 Who May Request Review.—The property owner, Tax Commissioner, protester 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. Parties to the proceeding wherein review by the circuit court is sought shall pay costs and fees as they are incurred: Provided, That the circuit court upon rendering judgment or making any order may award costs to any party in accordance with the provisions of W. Va. Code §53-3-5."

(e) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (administrative review of appraisals by the state tax commissioner), are authorized.

(f) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (additional review and implementation of property appraisals), are authorized.

1 The legislative rules filed in the state register on the
2 eleventh day of August, one thousand nine hundred
3 eighty-six, relating to the state tax commissioner
4 (guidelines for assessors to assure fair and uniform
5 personal property values) are authorized.


1 (a) The legislative rules filed in the state register on
2 the twenty-eighth day of September, one thousand nine
3 hundred eighty-four, relating to the state tax commis-
4 sioner (estimated personal income tax), are authorized
5 with the amendments set forth below:

6 55.02(a)(2)(on page 182.2) line 18, after the word
7 “profession” strike the words “on his own account” and
8 the comma(.)

9 55.12(b)(1)(page 182.35) at the end of the section,
10 change the period to a comma, and add the following
11 language: “and in the case of a court appointed agent,
12 a copy of the court order of appointment is sufficient.”

13 55.12(c)(page 182.36) after the word “for”, strike the
14 word “erroneous”.

(b) The legislative rules filed in the state register on
16 the twenty-eighth day of September, one thousand nine
17 hundred eighty-four, modified by the state tax commis-
18 sioner to meet the objections of the legislative rule-
19 making review committee and refiled in the state
20 register on the fourteenth day of November, one
21 thousand nine hundred eighty-four, and on the twenty-
22 first day of March, one thousand nine hundred eighty-
23 five, relating to the state tax commissioner (estimated
24 corporation net income tax), are authorized.

25 (c) The legislative rules filed in the state register on
26 the fourth day of February, one thousand nine hundred
27 eighty-six, modified by the state tax commissioner to
28 meet the objection of the legislative rule-making review
29 committee and refiled in the state register on the
30 fourteenth day of January, one thousand nine hundred
eighty-seven, relating to the state tax commissioner (business and occupation tax) are authorized.


1 The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of December, one thousand nine hundred eighty-six, relating to the state tax commissioner (registration of transient vendors), are authorized.


(a) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (waste water treatment works operations), are authorized.

(b) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (laboratory reporting of syphilis and gonorrhea) are authorized.

(c) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (public water supply operators) with the modification of §11.02 as presented to the legislative rule-making review committee on the ninth day of November, one thousand nine hundred eighty-two, are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of October, one thousand nine hundred eighty-two, relating to the state board of health (sewage systems) with the modification presented to the legislative rule-making review committee on the sixth day of December, one thousand nine hundred eighty-two, are authorized except lines ten through seventeen, page eight of the rules, shall be stricken in their entirety and the remaining paragraphs renumbered. These rules were proposed by the state board of health pursuant to sections seven and nine, article one, chapter sixteen of this code.
(e) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (approval of laboratories), are authorized. These rules were proposed by the state board of health pursuant to section one, article seven, chapter sixteen and section six-a, article one, chapter forty-eight of this code.

(f) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, and filed with amendments on the eleventh day of January, one thousand nine hundred eighty-three, relating to the state board of health (nursing home licensure), are authorized with the amendment of §5.15.02 of those rules as set forth below:

By striking the word “and” at the end of subdivision (f), by changing the period at the end of subdivision (g) to a semicolon, and by adding the following after subdivision (g): “(h) one (1) member who represents social work services.”

These rules were proposed by the state board of health pursuant to section seven, article one, chapter sixteen and section three, article five-c, chapter sixteen of this code.

(g) The legislative rules filed in the state register on the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (trauma center or facility designation), are authorized.

(h) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-three, relating to the state board of health (well water regulations) are authorized with the amendments set forth below:

§4.1. In the first sentence delete the word “obtaining” and insert in lieu thereof the words “applying for.” In the second sentence after “4.3” add “and 4.5.”

§4.2. At the end of the second sentence, strike the period and add the words “unless emergency conditions prevail as noted under §4.3.”
With the balance of §4.2 and create a new §4.3 with the following changes: In the first sentence delete the word “deadline” and insert in lieu thereof the word “requirements.” Add after the first sentence the sentence, “Emergency conditions and unavoidable circumstances are those conditions involving acts of God, water outages or disruption of water service, unsatisfactory water quality or quantity or public health threats.” In the third sentence delete the word “exceed” and insert in lieu thereof the words “be made in excess of.”

Renumber §4.3 as §4.4 and add the following two sentences at the end of the section: “Such standards shall constitute the minimum standards for the installation, the alteration or the deepening of water wells. Any plans approved by the director pursuant to these regulations shall be in substantial compliance with the heretofore mentioned standards.”

Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7 as §4.8 and §4.8 as §4.9.

§5.2. Delete the words “four(4)” and insert in lieu thereof the words “two(2)” and delete the words “active, continuous.”

(i) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (procedures for recovery of corneal tissue for transplant) are authorized.

(j) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the state board of health (reportable diseases) are authorized.

(k) The legislative rules filed in the state register on the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (retail food store sanitation) are authorized.

(l) The legislative rules filed in the state register on the seventeenth day of July, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review
committee and refiled in the state register on the sixteenth day of October, one thousand nine hundred eighty-six, relating to the state board of health (methods and standards for chemical tests for intoxication) are authorized.

§64-2-16(3a)(2). Director of health.

The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-six, modified by the director of the department of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth of October, one thousand nine hundred eighty-six, relating to the director of the department of health (hazardous material treatment information repository) are authorized.


The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (vital statistics) are authorized.


(a) The legislative rules filed in the state register on the eighteenth day of April, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, one thousand nine hundred eighty-six, relating to the state board of health (hospital licensure) are authorized.

(b) The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine
hundred eighty-six, relating to the state board of health
(hospital licensure and allowing hospitals to have
licensed hospital professionals, other than licensed
physicians, on their medical staff) are authorized.

§64-2-16(29a)(5). West Virginia hospital finance
authority.

The legislative rules filed in the state register on the
tenth day of June, one thousand nine hundred eighty-
six, modified by the West Virginia hospital finance
authority to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the ninth day of January, one thousand nine
hundred eighty-seven, relating to the West Virginia
hospital finance authority (establishment of fee schedule
and cost allocation applicable to issuance of bonds) are
authorized.


(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.

(d) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, 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 ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (seizure of a driver’s license and issuance of a temporary driver’s license), are authorized.

(e) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, 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 ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (federal safety standards inspection program) are authorized.

§64-2-19(1a)(3). Division of forestry; department of agriculture.

The rules authorized by the Legislature in section nineteen (one-a) (four) of this article were also proposed by the commissioner of agriculture pursuant to section three, article one-a, chapter nineteen of this code.

§64-2-19(1a)(4). Division of forestry; department of agriculture.

The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the director of the division of forestry of the department of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of...
January, one thousand nine hundred eighty-seven, relating to the director of the division of forestry of the department of agriculture (ginseng), are authorized. These rules were proposed by the director of the division of forestry of the department of agriculture pursuant to sections three and four, article one-a, chapter nineteen of the code.


(a) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (use of certain picloram products), are authorized.

(b) The legislative rules filed in the state register on the eighteenth day of June, 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 fifth day of January, one thousand nine hundred eighty-seven, relating to the commissioner of agriculture (West Virginia pesticide use and application act), 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.

(c) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-six, relating to the department of natural resources (WV/NPDES program for coal mines and preparation plants, and the refuse and waste
therefrom), are authorized with the amendments set forth below:

On page four, §1.9.1.a by inserting the words “five thousand dollars or” after the words “significant portion of income’ means” and

On page four, §1.9.1.a by inserting the words “whichever is less,” after the words “ten percent or more of gross personal income for a calendar year”.

§64-2-20(2)(12). Director of the department of natural resources.

The legislative rules filed in the state register on the seventh day of August, one thousand nine hundred eighty-six, relating to the director of the department of natural resources (procedures for transporting and dealing in furbearing animals), are authorized.

§64-2-20(2)(23a). Department of natural resources; commercial whitewater advisory board.

The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-six, modified by the commercial whitewater advisory board to meet the objections of the legislative rule-making review committee and refiled in the state register on sixteenth day of January, one thousand nine hundred eighty-seven, relating to the commercial whitewater advisory board (commercial whitewater outfitters), are authorized with the following amendments:

On page 1, §2.1, by striking all of §2.1 and inserting in lieu thereof the following: “2.1 Commercial whitewater outfitter means any person, partnership, corporation or other organization, or any combination thereof, duly authorized and operating from within or from without the state, which for monetary profit or gain, provides whitewater expeditions or rents whitewater craft or equipment for use in whitewater expeditions on any river, portions of rivers or waters of the state.”

§64-2-20(5)(5). Water resources board.

The legislative rules filed in the state register on the
seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (special regulations) are authorized. These rules were proposed by the state water resources board pursuant to section three, article five-a, and section five, article five, of chapter twenty of this code.

§64-2-20(5a)(3). Water resources board.

(a) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-three, relating to the state water resources board (underground injection control program), are authorized.

(b) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred eighty-three, relating to the state water resources board (special regulations), are authorized.

(c) The legislative rules filed in the state register on the third day of August, one thousand nine hundred eighty-three, relating to the state water resources board (groundwater protection standards), are authorized.

(d) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred eighty-three, relating to the state water resources board (state national pollutant discharge elimination system (NPDES) program), are authorized.

(e) The Legislature hereby authorizes and directs the state water resources board to promulgate rules relating to water quality standards in exact conformity with the rules relating to water quality standards tendered to the secretary of state on the seventh day of March, one thousand nine hundred eighty-four, by the executive secretary of the state water resources board, to be received and filed for inclusion in the state register by the secretary of state.
(f) The legislative rules filed in the state register on the seventh day of January, one thousand nine hundred eighty-five, modified by the water resources board 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 water resources board (water quality standards), are authorized.

(g) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred eighty-seven, and further modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (water quality standards), are authorized.

(h) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred eighty-seven, and further modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (state national pollutant discharge elimination system (NPDES) program), are authorized.

(i) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one
thousand nine hundred eighty-seven, relating to the
state water resources board (underground injection
control program), are authorized.

(i) The legislative rules filed in the state register on
the seventeenth day of October, one thousand nine
hundred eighty-five, and modified by the state water
resources board to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twenty-fourth day of February, one
thousand nine hundred eighty-seven, relating to the
state water resources board (special regulations), are
authorized. These rules were proposed by the state
water resources board pursuant to section three, article
five-a, and section five, article five, of chapter twenty
of this code.

§64-2-20(5c)(6). Water development authority.

(a) The legislative rules filed in the state register on
the thirtieth day of August, one thousand nine hundred
eighty-four, relating to the water development authority
(hardship grant funds), are authorized.

(b) The legislative rules filed in the state register on
the fourteenth day of August, one thousand nine
hundred eighty-six, relating to the water development
authority (requirements governing disbursements of
loans and grants to governmental agencies for the
acquisition or construction of water development
projects), are authorized.

§64-2-20(5e)(6). Department of natural resources.

(a) 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 commis-
sion (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."

(g) The legislative rule filed in the state register on the twenty-sixth day of September, one thousand nine hundred eighty-six, 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 ninth day of December, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management regulations), are authorized.

(h) The legislative rule filed in the state register on the ninth day of January, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations), are authorized.

(i) The legislative rule filed in the state register on the fifth day of March, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations, Series 35) are authorized.

§4-2-22(1)(13). Department of energy; director of the division of oil and gas.

(a) The legislative rules filed in the state register on
the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (oil and gas wells and other wells), are authorized.

(b) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the oil and gas division of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (certification of gas wells), are authorized.

(c) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (underground injection control), are authorized.

(d) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (state national pollutant discharge elimination system (NPDES) program), are authorized.

(a) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (miscellaneous water pollution control), are authorized.

(b) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (dam control), are authorized.

(c) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (solid waste management), are authorized.

(d) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (hazardous waste management), are authorized.

(e) The rules authorized by the Legislature in section twenty-two-a (three) (forty) of this article were also proposed by the commissioner of the department of
energy pursuant to section sixteen, article one, chapter twenty-two of this code.

§64-2-22(9)(6). Commissioner of the department of energy.

(a) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (standards for certification of coal mine electricians), are authorized with the following amendments:

"Page one, §2.1, subsection (a), following the second word 'electrician' by striking the colon and inserting the following: 'under the supervision required by section 4.1(d) of these rules' and a colon.

Page one, §2.1, subsection (a), by deleting all of subdivision 6) and renumbering the subsequent subdivisions.

Page two, §2.1, subsection (a), by deleting all of subdivision 9).

Page two, §2.1, subsection (b), by deleting all of subdivision 14) and inserting in lieu thereof a new subdivision 14) to read as follows: '14) Replace blown fuses on trolley poles and nips.'

Page five, §4.1, subsection (d), line three, following the words 'certified electrician prior' by inserting the words 'to any work being performed and again prior'."

(b) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (safety
training program for prospective underground coal
miners in West Virginia), are authorized.

(c) The legislative rules filed in the state register on
the fifteenth day of December, one thousand nine
hundred eighty-six, modified by the commissioner of the
department of energy to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twenty-first day of January, one
thousand nine hundred eighty-seven, relating to the
commissioner of the department of energy (safety
training program for prospective surface coal miners in
West Virginia), are authorized.

(d) The legislative rules filed in the state register on
the third day of April, one thousand nine hundred
eighty-seven, relating to the department of energy
standards for certification of underground belt examin-
ers for underground coal mines) are authorized.

§64-2-22a(3)(40). Commissioner of the department of
energy.

The legislative rules filed in the state register on the
twelfth day of January, one thousand nine hundred
eighty-seven, modified by the commissioner of the
department of energy 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-seven, relating to the
commissioner of the department of energy (state
national pollutant discharge elimination system
(NPDES) for mines and minerals), are authorized.


(a) The legislative rules filed in the state register on
the fourteenth day of November, one thousand nine
hundred eighty-three, relating to the state board of
health (licensure of behavioral health centers), are
authorized with the amendments set forth below:

Page 45, § 12.8.2. In the first sentence delete the words
"without delay" and insert in lieu thereof the words
"within twenty-four hours after receiving a report of a
complaint."
(b) The legislative rules filed in the state register on the twenty-first day of November, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (licensure of behavioral health centers), are authorized.


The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-three and on the twenty-first day of November, one thousand nine hundred eighty-six and authorized by the Legislature in section twenty-seven (nine) (one) of this article, were also proposed by the state board of health pursuant to section three, article seventeen, chapter twenty-seven of this code.

§64-2-29(3)(5). State fire commission.

(a) The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state fire commission (state fire code) are authorized with the amendments set forth below:

Page 1, § 106, line 1, after the word “to” add the words “personal care homes caring for five or less patients or”;

and

Page 26, § 11.06(3)A.(3). Strike the period at the end of the sentence and add the words “except for existing sleeping rooms owned by the state and located in dormitories or state parks.”

(b) The legislative rules filed in the state register on the first day of August, one thousand nine hundred eighty-six, modified by the state fire commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred eighty-six, relating to the state fire commission
(hazardous substance emergency response training program), are authorized.

§64-2-29(6)(10). Civil service commission.

1 The legislative rules filed in the state register on the nineteenth day of November, one thousand nine hundred eighty-six, modified by the civil service commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the civil service commission (civil service system), are authorized.

§64-2-30(6)(3). Board of embalmers and funeral directors.

1 (a) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred eighty-four, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of embalmers and funeral directors (apprenticeship), are authorized.

10 (b) The legislative rules filed in the state register on the sixteenth day of October, one thousand nine hundred eighty-five, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of July, one thousand nine hundred eighty-six, relating to the board of embalmers and funeral directors (governing the board of embalmers and funeral directors), are authorized.

§64-2-30(7a)(5). West Virginia board of examiners for licensed practical nurses.

1 (a) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, modified by the West Virginia board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred eighty-six,
relating to the West Virginia board of examiners for licensed practical nurses (policies relating to licensure of the licensed practical nurse), are authorized.

(b) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (legal standards of nursing practice for the licensed practical nurse) are authorized.

(c) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (fees for services rendered by the board) are authorized.

§64-2-31a(8b)(5). Commissioner of banking.

The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-six, modified by the commissioner of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-six, relating to the commissioner of banking (implementing the West Virginia community reinvestment act), are authorized.


(a) The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-three, relating to the insurance commissioner (excess line brokers), are authorized.

(b) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the insurance commissioner to meet the objection of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, one thousand nine hundred eighty-six, relating to the insurance commissioner (examiners' compensation, qualification and classification), 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 state board of risk and insurance management to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-six, relating to the state board of risk and insurance management (mine subsidence insurance program), are authorized.


(a) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-six, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred eighty-six, relating to the attorney general (prevention of unfair or deceptive acts or practices in home improvement and home construction transactions), are authorized. These rules were proposed by the attorney general pursuant to section one hundred three, article six and section one hundred two, article seven of chapter forty-six-a of this code with the following amendments:

"Amending the title to the proposed legislative rule wherever said title may appear, on lines three and four thereof, by striking the words 'and home construction'.

On the index page following '3.' by striking the words 'and home construction'.

On page 1, §1.2, line three, after the first word 'transactions' on line three, by striking the comma and the words 'and home construction transactions' and on line five, by striking the period and inserting the words 'but shall not cover new construction of single-family dwellings or rebuilding all or substantially all of an existing or preexisting single-family dwelling.'

Page 2, section 2.2 by striking all of lines seven and eight and inserting in lieu thereof the following:
On page 2, section 2.4, by striking all of section 2.4 and inserting in lieu thereof a new section 2.4, to read as follows:

2.4 “Home Construction” means, for the purpose of this Rule, the repair, remodeling or the building of additions to existing single-family dwelling units, including single-family homes, condominium units or any other dwelling unit to be used by any person primarily for personal or family use, but shall not include new single-family home construction or the rebuilding of all or substantially all of an existing or preexisting single-family dwelling.’

Page 3, section 2.6, on line two thereof, after the second comma by inserting the word ‘replacement’.

Page 3, section 3., by striking the words ‘and home construction’ from the section heading.

Page 3, section 3.1, lines one and two, by striking the words ‘or home construction’.

Page 4, section 3.1.4, on lines one and two thereof, by striking the words ‘or home construction’.

Page 4, section 3.1.8, on line two thereof, by striking the words ‘or home construction’.

Page 4, section 3.1.9, on lines two and three thereof, by striking the words ‘or home construction’.

Page 5, section 3.1.12, on lines one and two thereof, by striking the words ‘or home construction’.

Page 6, section 3.1.26, by striking all of section 3.1.26 and renumbering the subsequent subsections.

Page 7, section 3.1.29, on lines one and two thereof, by striking the words ‘or home construction’.

Page 7, section 3.1.29, on line six thereof, following the word ‘contract’ by inserting a period and striking the remainder of the section.
Page 7, following section 3.1.29 by adding a new section to be designated section 3.1.29, to read as follows:

‘failed to file a certificate in the office of the Clerk of the County Commission in the county in which the principal place of business of the seller is located, setting forth the assumed name in or by which the business is being conducted in conformity with the provisions of Chapter 47, Article 8, Section 2 of the Code of West Virginia, 1931, as amended.’

Page 7, section 3.2, on lines two and three thereof, by striking the words, ‘or home solicitation sale of home construction’ and the comma on line three.

Page 9, section 4.1, on line eight thereof, by deleting the period and inserting the following:

‘to the extent permitted by statute’ and a period.

Page 10, section 4.2, on line 9 thereof, by striking the period and inserting the following:

‘to the extent permitted by statute’ and a period.”

(b) The legislative rules filed in the state register on the twenty-third day of September, one thousand nine hundred eighty-six, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred eighty-six, relating to the attorney general (prevention of unfair or deceptive acts or practices in the sale of damaged goods or products), are authorized. These rules were proposed by the attorney general pursuant to section one hundred three, article six and section one hundred two, article seven of chapter forty-six-a of the code.


The legislative rules authorized by the Legislature in section forty-six-a (six) (one hundred three) of this article were also proposed by the attorney general pursuant to section one hundred two, article seven, chapter forty-six-a of this code.
AN ACT to amend and reenact section four, article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notice of sale under a deed of trust; notice to be given by Class II advertisement; removing provisions for service by posting; and providing for service on the grantor by certified mail, return receipt requested.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§38-1-4. Notice of sale.

1 Unless property is to be sold under a deed of trust executed and delivered prior to the first day of July, one thousand nine hundred eighty, which contains a provision waiving the requirement of published notice, the trustee shall publish a notice of a trustee’s 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 where the property is located: Provided, That any notice of sale published since the first day of July, one thousand nine hundred eighty, and prior to the effective date of this section, shall be deemed to have met the requirements of the section if such were published as Class II legal advertisements, in compliance with the provisions of article three, chapter fifty-nine of this code, in that by the enactment of the acts of the Legislature, regular session, one thousand nine hundred eighty, the Legislature intended that all notice of sales pursuant to trust deeds were to have been published as Class II legal advertisements.
Except as expressly provided in this section, no trust deed shall waive the requirements of publication of notice required by this section.

In all cases, a copy of such notice shall be served on the grantor in such trust deed, or his agent or personal representative, by certified mail, return receipt requested, directed to the address shown by the grantors on the deed of trust or such other address given to the beneficiary of said trust deed or said beneficiary's agent or assignee in writing by the said grantor subsequent to the execution and delivery of the trust deed and notice shall be deemed complete when such notice is mailed to the aforesaid address, notwithstanding the fact that such mail may be returned as refused or undeliverable and shall be served by certified mail, at least twenty days prior to the sale, upon any subordinate lienholder who has previously notified the primary lienholder by certified mail of the existence of a subordinate lien. Every trust deed shall state the address to which such notice shall be mailed.

Every notice of sale by a trustee under a trust deed shall show the following particulars: (a) The time and place of sale; (b) the names of the parties to the deed under which it will be made; (c) the date of the deed; (d) the office and book in which it is recorded; (e) the quantity and description of the land or other property or both conveyed thereby; and (f) the terms of sale.

Notice to a subordinate lienholder shall be complete when such notice is mailed in accordance with the provisions of this section, directed to the address of the subordinate lienholder as provided by such subordinate lienholder in the notice of existence of a subordinate lien.

The provisions of this section relating to the methods of serving notice are not exclusive. In addition to, but not in lieu of, any service of notice required by the provisions of this section, service of such notice may be also made by any other method authorized for the service of original process in the circuit courts of this
state by statute or by the rules of civil procedure for trial courts of record.

An individual who purchases property at a trustee's sale is under no duty to ascertain whether notice was given to subordinate lienholders in accordance with the provisions of this section, and such right, title and interest as the purchaser may acquire shall not be affected by defects in such notice or the service thereof, if the purchaser is otherwise a bona fide purchaser for value.

CHAPTER 78

(Com. Sub. for H. B. 2054—By Delegate W. Martin)

[Passed January 30, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and ten, article twelve, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to and requiring the release of liens when debt secured thereby is fully satisfied if the lien is properly recorded; requiring that such release must be provided within thirty days of a request therefor; legal action on refusal of lienholder to furnish and execute a release of lien; and attorney fees and court costs taxed against party so refusing.

Be it enacted by the Legislature of West Virginia:

That sections one and ten, article twelve, 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 12. RELEASE AND ASSIGNMENT OF LIENS.

§38-12-1. When release of lien required; requisites thereof.
§38-12-10. Action on refusal of lienholder to execute release.
§38-12-1. When release of lien required; requisites thereof.

(a) Every person entitled to the benefit of any lien on any estate, real or personal, or to the money secured thereby, whether the lien was created by conveyance, judgment, decree, lis pendens, notice of attachment, deed of trust, contract or otherwise, shall be required to furnish and execute an apt and proper written release thereof free of charge to the debtor whose obligation secured by such lien has been fully paid and satisfied, if the lien is of record in the proper county. Such release shall be executed and furnished to the debtor within thirty days after the debt has been satisfied.

(b) Such release of lien shall be executed by the lienholder and acknowledged before the clerk of the county commission in whose office the lien is recorded or before such other person authorized to take acknowledgments of deeds. Such written release shall be deemed sufficient if it describe the lien to be released by any words that will identify and show an intent to discharge the same. Releases may also be made according to the provisions of section two of this article.

§38-12-10. Action on refusal of lienholder to execute release.

In case of the failure of the party holding such lien to furnish and execute an apt and proper release upon request of the party entitled thereto as required by section one of this article, the circuit court having jurisdiction may, on motion, after reasonable notice to the party so failing, and if no good cause be shown against it, direct the clerk of the county commission to execute such release, and it shall thereupon have the effect of releases executed under section one of this article. The proceedings shall be at the cost of the lienholder who so refuses without good cause and the court shall also award reasonable attorney fees and court costs to the person entitled to such release if such person be the prevailing party.
AN ACT to amend and reenact sections three and four, article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to linked deposit loans; loan cap; application for loan priority; loan package; and eligibility criteria.

Be it enacted by the Legislature of West Virginia:

That sections three 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 to read as follows:

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-3. Limitations on investment in linked deposits.

(a) The state treasurer may invest in linked deposits:

Provided, That at the time of the 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:

Provided, however, That after the first day of April, one thousand nine hundred eighty-seven, the state treasurer shall reserve ten million dollars of the unallocated aggregate for linked deposits to such West Virginia flood victims and may use the remaining balance of such unallocated moneys in the regular linked deposit program: Provided further, That after the first day of January, one thousand nine hundred eighty-eight, the
remaining balance of unallocated moneys may be used in the regular linked deposit program.

(b) Small business linked deposit funds shall not be used to provide each applicant with more than fifty thousand dollars for a reduced rate loan for each nonmanufacturing job created or preserved or provide more than one hundred twenty-five thousand dollars for a reduced rate loan for each manufacturing job created or preserved. This subsection shall not preclude any flood victim from applying for a linked deposit under the flood program.

§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. An eligible small business shall make a sworn affidavit stating that the reduced rate loan will not be used to refinance an existing debt, unless it can be demonstrated to show the business will fail if not granted such loan. 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. If jobs are to be preserved by the receipt of such loan, the eligible lending institution shall decide between small businesses that had no profit in the last tax year verified by independent audit filed for relief
under the federal bankruptcy laws in the past year or
has been adversely affected by a nonreimbursed
casualty loss due to a natural disaster. An eligible small
business shall make a sworn affidavit stating that one
of the above mentioned circumstances applies to their
business. There shall also be a continuous internal audit
conducted by the state treasurer which shall be made
available to the Legislature annually.

(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 80
(Com. Sub. for H. B. 2498—By Delegate Love)

[Passed March 19, 1987; in effect from passage. Approved by the Governor.]

AN ACT to repeal section nine-b, article one, chapter fifty of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact
sections three, eight and nine of said article one, all
relating to the salary of magistrates; magistrate court
clerks; and magistrate court deputy clerks and magis-
trate assistants.

Be it enacted by the Legislature of West Virginia:

That section nine-b, article one, chapter fifty of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be repealed; and that sections three, eight and nine
of said article one be amended and reenacted, all to read as
follows:
ARTICLE 1. COURTS AND OFFICERS.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.


The salary of each magistrate shall be paid by the state. Beginning on the first day of July, one thousand nine hundred eighty-seven, magistrates who serve less than ten thousand in population shall be paid annual salaries of nineteen thousand dollars; magistrates who serve ten thousand or more in population but less than fifteen thousand in population shall be paid annual salaries of twenty-five thousand one 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, That on and after the first day of January, one thousand nine hundred eighty-nine, magistrates who serve less than ten thousand in population shall be paid annual salaries of twenty thousand six hundred twenty-five dollars and magistrates who serve ten thousand or more in population shall be paid annual salaries of twenty-seven thousand dollars. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. Magistrates shall be paid once a month.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

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.

Magistrate court clerks shall be paid a monthly salary by the state. Beginning on the first day of July, one thousand nine hundred eighty-seven, 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 five hundred sixty-six dollars per month; 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, That on and after the first day of January, one thousand nine hundred eighty-nine, magistrate court clerks serving magistrates who serve less than ten thousand in population shall be paid up to one thousand two hundred forty-one dollars and magistrate court clerks serving magistrates who serve ten thousand or more in population shall be paid up to one thousand six hundred fifty 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 magistrate court clerk in the county, the clerk of the circuit court shall have the authority to issue all manner of civil process and to require the enforcement of subpoenas and subpoenas duces tecum in magistrate court.


In each county there shall be one magistrate assistant for each magistrate. 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;

(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-seven, 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 magistrates who serve ten thousand or more in population but less than fifteen thousand in population shall be paid up to one thousand ninety-five dollars per month: Provided, That on and after the first day of January, one thousand nine hundred eighty-nine, magistrate assistants serving magistrates who serve less than ten thousand in population 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 two hundred twenty-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.
AN ACT to amend and reenact section thirteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of commerce, division of parks and recreation; renaming the improved recreational area of Camp Creek State Forest in Mercer County as the “Camp Creek State Park” and continuing it under the authority of the division of parks and recreation.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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-1-13. Division of parks and recreation; purpose; powers and duties generally.

It shall be the duty of the division of parks and recreation to have within its jurisdiction and supervision:

(a) All state parks and state recreation areas, including all lodges, cabins, swimming pools, motorboating and all other recreational facilities therein, except the roads therein which, by reason of section one, article four, chapter seventeen of this code, are transferred to the state road system and to the responsibility of the commissioner of highways with respect to the construction, reconstruction and maintenance of the roads or any future roads for public usage on publicly owned lands in future state parks, state forests and public hunting and fishing areas;

(b) The authority and responsibility to do the necessary cutting and planting of vegetation along road rights-of-way in state parks and recreational areas;
(c) The administration of all laws and regulations relating to the establishment, development, protection, use and enjoyment of all state parks and state recreational facilities consistent with the provisions of this article: Provided, That nothing herein shall be construed to assign to the division of parks and recreation of the department of commerce the law-enforcement duties set forth in article seven, chapter twenty of this code, which duties shall remain the responsibility of the department of natural resources;

(d) The Berkeley Springs sanitarium in Morgan County shall be continued as a state recreational facility under the jurisdiction and supervision of the department of commerce and shall be managed, directed and controlled as prescribed here in this article and in article one, chapter twenty of this code.

The commissioner shall have and is hereby granted all of the powers and authority and shall perform all of the functions and duties with regard to Berkeley Springs sanitarium that were previously vested in and performed by the director of the department of natural resources, who shall no longer have such power and authority and whose power and authority with regard to Berkeley Springs sanitarium is hereby abolished;

(e) The Washington Carver camp in Fayette County is hereby transferred from the department of natural resources to the commissioner who shall have the jurisdiction and supervision of the camp subject to the jurisdiction and authority of the department of culture and history as provided under section thirteen, article one, chapter twenty-nine of this code. The commissioner shall manage the Washington Carver camp as a state recreational facility and a component of the state park system;

(f) The improved recreational area of Camp Creek State Forest in Mercer County, as delineated according to section three, article one-a, chapter nineteen of this code, is hereby renamed as the Camp Creek State Park and under that name shall be managed as a state recreational facility; and
(g) The commissioner of the department of commerce shall be primarily responsible for the execution and administration of the provisions herein as an integral part of the parks and recreation program of the state and shall organize and staff his division for the orderly, efficient and economical accomplishment of these ends.

CHAPTER 82
(H. B. 3155—By Mr. Speaker, Mr. Chambers)
[Passed April 7, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, fourteen, twenty, twenty-four, twenty-six, thirty-seven, forty-three, forty-six, fifty-five, fifty-six, fifty-eight, sixty-three and seventy-seven, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article two by adding thereto a new section, designated section seventy-one-a; and to amend and reenact section twenty-two (nine) (six), article two, chapter sixty-four of said code, all relating to underground mines generally; coal mine plans of ventilation and approval of director; fans; safety inspections; removal of gases; preparation of danger signal by fire boss; control of coal dust; rock dusting; specific requirements as to roof supports; haulage roads and equipment; shelter holes; signals; inspection; electrical equipment in mines; welding and cutting; protective equipment and clothing; checking systems; fire protection; certificate of approval for coal mines; right to refuse to work in unsafe area; certain practices prohibited; monthly report by operator of mine and providing certain exceptions therefor; and authorizing the promulgation of certain legislative rules and regulations relating to the standards for certification of underground belt examiners for underground coal mines.

Be it enacted by the Legislature of West Virginia:

That sections two, three, fourteen, twenty, twenty-four, twenty-six, thirty-seven, forty-three, forty-six, fifty-four, fifty-five, fifty-six, fifty-eight, sixty-three and seventy-seven, article
two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article two be further amended by adding thereto a new section, designated section seventy-one-a; and that section twenty-two (nine) (six), article two, chapter sixty-four of said code, be amended and reenacted, all to read as follows:

Chapter
22A. Mines and Minerals.
64. Legislative Rules.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-2. Plan of ventilation; approved by director of the division of mines and minerals.
§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.
§22A-2-24. Control of coal dust; rock dusting.
§22A-2-26. Roof support; specific requirements.
§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.
§22A-2-46. Welding and cutting.
§22A-2-55. Protective equipment and clothing.
§22A-2-56. Checking systems.
§22A-2-63. No mine to be opened or reopened without prior approval of commissioner of the department of energy; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.
§22A-2-71a. Right of miner to refuse to work in an unsafe area or unsafe manner.
§22A-2-77. Monthly report by operator of mine; exception as to certain inactive mines.

§22A-2-2. Plan of ventilation; approval by director of the division of mines and minerals.

Every operator of a coal mine, before making any new or additional openings, shall submit to the director, for his information and approval, a general plan showing the proposed system of ventilation and ventilating equipment of the openings, with their location and
relative positions to adjacent developments; no such new
or additional openings shall be made until approved by
the director, in consultation with the deputy directors
of permitting and safety, health and training. The
operator shall deliver to the miners' representative
employed by the operator at the mine a copy of the
operator's proposed annual ventilation plan at least ten
days prior to the date of submission. The miners'
representative shall be afforded the opportunity to
submit written comments to the operator prior to such
submission; in addition the miners' representative may
submit written comments to the director. The director
shall promptly approve any such plans submitted, if the
proposed system of ventilation and ventilating equip-
ment meet the requirements of this article.


(a) The ventilation of mines, the systems for which
extend for more than two hundred feet underground
and which are opened after the effective date of this
article, shall be produced by a mechanically operated
fan or mechanically operated fans. Ventilation by means
of a furnace is prohibited in any mine. The fan or fans
shall be kept in continuous operation, unless written
permission to do otherwise be granted by the director.
In case of interruption to a ventilating fan or its
machinery whereby the ventilation of the mine is
interrupted, immediate action shall be taken by the
mine operator or his management personnel, in all
mines, to cut off the power and withdraw the men from
the face regions or other areas of the mine affected. If
ventilation is restored in fifteen minutes, the face
regions and other places in the affected areas where gas
(methane) is likely to accumulate, shall be reexamined
by a certified person; and if found free of explosive gas,
power may be restored and work resumed. If ventilation
is not restored in fifteen minutes, all underground
employees shall be removed from the mine, all power
shall be cut off in a timely manner, and the under-
ground employees shall not return until ventilation is
restored and the mine examined by certified persons,
mine examiners, or other persons holding a certificate
to make preshift examination.

(b) All main fans installed after the effective date of
this article shall be located on the surface in fireproof
 housings offset not less than fifteen feet from the nearest
 side of the mine opening, equipped with fireproof air
ducts, provided with explosion doors or a weak wall, and
operated from an independent power circuit. In lieu of
the requirements for the location of fans and pressure-
relief facilities, a fan may be directly in front of, or over
a mine opening: Provided, That such opening is not in
direct line with possible forces coming out of the mine
if an explosion occurs: Provided, however, That there is
another opening having a weak-wall stopping or
explosion doors that would be in direct line with forces
coming out of the mine. All main fans shall be provided
with pressure-recording gauges or water gauges. A
daily inspection shall be made of all main fans and
machinery connected therewith by a certified electrician
and a record kept of the same in a book prescribed for
this purpose or by adequate facilities provided to
permanently record the performance of the main fans
and to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be
used in lieu of or in conjunction with line brattice to
provide adequate ventilation to the working faces:
Provided, That auxiliary fans be so located and operated
to avoid recirculation of air at any time. Auxiliary fans
shall be approved and maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the
 electrical equipment in the place shall be stopped and
the power disconnected at the power source until
ventilation in the working place is restored. During such
stoppage, the ventilation shall be by means of the
primary air current conducted into the place in a
manner to prevent accumulation of methane.

(e) In places where auxiliary fans and tubing are
used, the ventilation between shifts, weekends and idle
shifts shall be provided to face areas with line brattice
or the equivalent to prevent accumulation of methane.

(f) The director may require that when continuous
mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he is not immediately available, a representative of the division. A duly authorized representative of the employees should be consulted if practical under the circumstances.


1 It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine all working places under his supervision for hazards at least once every two hours during each coal-producing shift, or more often if necessary for safety. In all mines such examinations shall include tests with an approved detector for methane and oxygen deficiency, which tests for oxygen deficiency may be with a permissible flame safety lamp: Provided, That a flame safety lamp may be used for methane testing when a malfunction occurs with a methane detector. It shall also be his duty to remove as soon as possible after its discovery any accumulations of explosive or noxious gases in active workings, and where practicable, any accumulations of explosive or noxious gases in the worked out and abandoned portions of the mine. It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine each mine within three hours prior to the beginning of a shift and before any miner in such shift enters the active workings of the mine.

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

1 It shall be the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a
separate signal for each shift) with red color at the mine entrance at the beginning of his shift or prior to his entering the mine to make his examination and, except for those persons already on assigned duty, no person except the mine owner, operator or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him to be safe. When reported by him to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make such fire boss examinations shall be assigned a definite underground area of such mine, and, in making his examination shall examine all active working places in the assigned area and make tests with an approved device for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test the roof, face, and ribs in the working places and on active roadways and travelways, approaches to abandoned workings and accessible falls in active sections. He shall place his initials and the date at or near the face of each place he examines. Should he find a condition which he considers dangerous to persons entering such areas, he shall place a conspicuous danger sign at all entrances to such place or places. Only persons authorized by the mine management may enter such places while the sign is posted and only for the purpose of eliminating the dangerous condition. Upon completing his examination he shall report by suitable communication system or in person the results of this examination to a certified person designated by mine management to receive and record such report, at a designated station on the surface of the premises of the mine or underground, before other persons enter the mine to work in such coal-producing shifts. He shall also record the results of his examination with ink or indelible pencil in a book prescribed by the director, kept for such purpose at a place on the surface of the mine designated by mine management. All records of daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.
§22A-2-24. Control of coal dust; rock dusting.

(a) In all mines, dangerous accumulations of fine, dry coal and coal dust shall be removed from the mine, and all dry and dusty operating sections and haulageways and conveyors and back entries shall be rock dusted or dust allayed by such other methods as may be approved by the director.

(b) All mines or locations in mines that are too wet or too high in incombustible content for a coal dust explosion to initiate or propagate are not required to be rock dusted during the time any of these conditions prevail. Coal dust and other dust in suspension in unusual quantities shall be allayed by sprinkling or other dust allaying devices.

(c) In all dry and dusty mines or sections thereof, rock dust shall be applied and maintained upon the roof, floor and sides of all operating sections, haulageways and parallel entries connected thereto by open crosscuts. Back entries shall be rock dusted. Rock dust shall be so applied to include the last open crosscut of rooms and entries, and to within forty feet of faces. Rock dust shall be maintained in such quantity that the incombustible content of the mine dust that could initiate or propagate an explosion shall not be less than sixty-five percent, but the incombustible content in return entries shall not be less than eighty percent.

(d) Rock dust shall not contain more than five percent by volume of quartz or free silica particles and shall be pulverized so that one hundred percent will pass through a twenty mesh screen and seventy percent or more will pass through a two hundred mesh screen.

§22A-2-26. Roof support; specific requirements.

(a) Generally. — The method of mining followed in any coal mine shall not expose the miner to unusual dangers from roof falls.

(b) Roadways, intersections and arches. — The width of roadways shall not exceed sixteen feet unless
additional support is added cross sectional. During the development of intersections, the roof between the tangents of the arches in the entry or room shall be supported with artificial roof supports prior to the development of such intersections. All areas where the arch is broken shall be considered as having unsupported roof and such roof should have artificial roof supports installed prior to any other work being performed in the area.

(c) Examinations and corrections. — Where miners are exposed to danger from falls of roof, face and ribs, the operator shall examine and test the roof, face and ribs before any work or machine is started, and as frequently thereafter as may be necessary to ensure safety. When dangerous conditions are found, they shall be corrected immediately. A probe or probes for methane detectors shall be provided on each working section other than longwall sections and sections mined solely with continuous miners with integral roof bolters.

(d) Roof bolt recovery. — Roof bolts shall not be recovered where complete extraction of pillars is attempted, where adjacent to clay veins or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

§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 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, except that when any section is fully developed and
being prepared for retreating, then the distance of such
maintenance can be extended to eight hundred feet if
a rubber tired vehicle is readily available.

(b) Track switches, except room and entry develop-
ment 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 locomotive 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 pur-
poses, 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 locomo-
tive 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 underground, 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 dispatcher 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.


(a) Methane. — 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 twelve inches from the roof, face or rib.

(b) Return air. — 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 specified area. For the
purpose of this provision, air used to ventilate a section
of a mine shall not be considered return air until such
time as the air has ventilated all of the workings in the
section.

(c) Qualified person to operate cutting machine. — 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) Inspections. — 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) **Indication of gas.** — In working places a 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 any 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 been pronounced safe by a certified person.

(f) **Periodic gas examinations.** — 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) **Operation of mining machines.** — Machine runners and helpers shall use care while operating mining machines. 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-
ence 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 cylind-
er shall be permitted on self-propelled machinery or
belt conveyors specially equipped for safe holding of the
containers in transportation. In no instance shall such
transportation be permitted in conjunction with any
mantrip, unless such mantrip is especially equipped
with a compartment, lined with at least four inches of
foam rubber or the equivalent, and capable of tightly
securing the tank inside the manufactured frame of the
vehicle.

(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 outby the last open breakthrough before cutting and welding may be performed on such equipment.

§22A-2-55. Protective equipment and clothing.

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles, or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.

(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine.

(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f) A self-rescue device approved by the director shall be worn by each person underground or kept within his immediate reach, and such device shall be provided by the operator. The self-rescue device shall be adequate to protect such miner for one hour or longer. Each operator shall train each miner in the use of such device, and refresher training courses for all underground employees shall be held during each calendar year.

§22A-2-56. Checking systems.

Each mine shall have a check-in and check-out system which will provide positive identification of every person underground and will provide an accurate record of the persons in the mine kept on the surface in a place that will not be affected in the event of an explosion. Said record shall bear a number or name identical to the
identification check that is securely fastened to the lamp belt of all persons underground. The identification check shall be made of a rust-resistant metal of no less than sixteen gauge.


(a) Suitable fire protection shall be provided at surface installations of fans, shops, tipples, and preparation plants, substations, hoist rooms and compressor stations.

(b) Fire drills and demonstration of various types of available fire-fighting equipment shall be held for employees at least every six months.

(c) The location of pipelines, location of valves, and fire taps shall be shown on a map of the mine and kept available at the mine office at all times.

(d) Each coal mine shall be provided with suitable fire-fighting equipment adapted for the size and condition of the mine. Fire-fighting equipment required under this article shall meet the following requirements:

(1) Waterlines shall be capable of delivering fifty gallons of water at a nozzle pressure of fifty pounds per square inch.

(2) A portable water car shall be of at least one thousand gallons capacity, and shall have at least three hundred feet of fire hose with nozzles. A portable water car shall be capable of providing a flow through the hose of fifty gallons of water per minute at a nozzle pressure of fifty pounds per square inch.

(3) A portable chemical car shall carry enough chemicals to provide a fire extinguishing capacity equivalent to that of a portable water car.

(4) A portable foam-generating machine shall have facilities and equipment for supplying the machine with thirty gallons of water per minute at thirty pounds per square inch for a period of thirty-five minutes.

(5) A portable fire extinguisher shall be either a multipurpose dry chemical type, containing a nominal
weight of five pounds of dry powder and enough expellant to apply the powder; or a foam-producing type containing at least two and one-half gallons of foam-producing liquid and enough expellant to supply the foam. Only fire extinguishers approved by the Underwriters Laboratories, Inc. or Factor Mutual Laboratories, carrying appropriate labels as to type and purpose shall be used after the first day of July, one thousand nine hundred seventy-one, and all new portable fire extinguishers acquired for use in a coal mine shall be of the multipurpose dry chemical type, having a 2A 10BC or higher rating.

(6) The fire hose shall be rubber-lined, mildew-proof and the cover shall be of flame-resistant qualities, meeting requirements for hose in Bureau of Mines Schedule 2G, except that the test flame shall be applied to the outer surface rather than to an open end. The bursting pressure shall be at least four times higher than the static water at the mine location; the maximum water pressure in the hose nozzle shall not exceed 100 p.s.i.g.

(e) Each working section of coal mines producing three hundred tons or more per shift shall be provided with two portable fire extinguishers and two hundred forty pounds of bagged rock dust or equivalent; water-lines shall extend to each section loading point and be equipped with enough fire hose to reach each working face unless the section loading point is provided with one of the following: (1) Two portable water cars or (2) two portable chemical cars, or (3) one portable water car or one portable chemical car and either a portable foam-generating machine or a portable high-pressure rock-dusting machine, fitted with at least two hundred fifty feet of hose and supplied with at least sixty sacks of rock dust.

(f) In all coal mines, waterlines shall be installed parallel to the entire length of belt conveyors and shall be equipped with fire hose outlets with valves at three-hundred-foot intervals along each belt conveyor and at tailpieces. At least five hundred feet of fire hose with fittings suitable for connection with each belt conveyor
waterline system shall be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry. Each working section of coal mines producing less than three hundred tons of coal per shift shall be provided with two portable fire extinguishers, two hundred forty pounds of bagged rock dust and at least five hundred gallons of water and at least three pails of ten-quart capacity. In lieu of the five hundred gallon water supply, a waterline with sufficient hose to reach the working places, a portable water car of five hundred fifty gallons capacity, or a portable all-purpose dry powder chemical car of at least one hundred twenty-five pounds capacity may be provided.

(g) In mines producing three hundred tons of coal or more per shift, waterlines shall be installed parallel to all haulage tracks using mechanized equipment in the track or adjacent entry and shall extend to the loading point of each working section. Waterlines shall be equipped with outlet valves at intervals of not more than five hundred feet, and five hundred feet of fire hose with fittings suitable for connection with such waterlines shall be provided at strategic locations. Two portable water cars, readily available, may be used in lieu of waterlines prescribed under this subsection.

(h) In mines producing less than three hundred tons of coal per shift, there shall be provided at five-hundred-foot intervals in all main and secondary haulage roads:

(1) A tank of water of at least fifty-five gallon capacity with at least three pails of not less than ten-quart capacity, or (2) not less than two hundred forty pounds of bagged rock dust.

(i) Each track or off-track locomotive, self-propelled man-trip car, or personnel carrier shall be equipped with one portable fire extinguisher.

(j) Two portable fire extinguishers shall be provided at each permanent electrical installation. One portable fire extinguisher and two hundred forty pounds of rock
dust or equivalent shall be provided at each temporary
electrical installation.

(k) Two portable fire extinguishers and two hundred
forty pounds of rock dust or equivalent shall be provided
at each permanent underground oil storage station. One
portable fire extinguisher shall be provided at each
working section where twenty-five gallons or more of oil
are stored in addition to extinguishers required under
subsection (e) of this section.

(l) One portable fire extinguisher or two hundred
forty pounds of rock dust or equivalent and water shall
be provided at locations where welding, cutting, or
soldering with arc or flame is being done.

(m) At each wooden door through which power lines
pass there shall be one portable fire extinguisher or two
hundred forty pounds of rock dust or equivalent within
twenty-five feet of the door on the intake air side.

(n) At each mine producing three hundred tons of coal
or more per shift, there shall be readily available the
following materials at locations not exceeding two miles
from each working section:

(1) One thousand board feet of brattice boards
(2) Two rolls of brattice cloth
(3) Two handsaws
(4) Twenty-five pounds of 8 dwt nails
(5) Twenty-five pounds of 10 dwt nails
(6) Twenty-five pounds of 16 dwt nails
(7) Three claw hammers
(8) Twenty-five bags of wood fiber plaster or ten bags
of cement (or equivalent material for stoppings)
(9) Five tons of rock dust.

(o) At each mine producing less than three hundred
tons of coal per shift, the above materials shall be
available at the mine: Provided, however, That the
emergency materials for one or more mines may be
stored at a central warehouse or building supply
company and such supply must be the equivalent of that
required for all mines involved and within one hour's
delivery time from each mine. This exception shall not
apply where the active working sections are more than
two miles from the surface.

§22A-2-63. No mine to be opened or reopened without
prior approval of commissioner of the
department of energy; approval fee; exten-
sion of certificate of approval; certificates
not transferable; section to be printed on
certificates.

(a) Permit request. — After the first day of July, one
thousand nine hundred seventy-one, no mine shall be
opened or reopened unless prior approval has been
obtained from the commissioner of the department of
energy, which approval shall not be unreasonably
withheld. The operator shall pay for such approval a fee
of ten dollars, which payment shall be tendered with the
operator's application for such approval: Provided, That
mines producing coal solely for the operator's use shall
be issued a permit without charge if coal production will
be less than fifty tons a year.

(b) Extension of permit. — Within thirty days after
the first day of January of each year, the operator of
each mine holding a certificate evidencing approval of
the commissioner to open a mine shall apply for the
extension of such certificate of approval for an addi-
tional year, excepting those approved by the director to
go on inactive status. Such approval, evidenced by a
certificate of the commissioner, shall be granted as a
matter of right and without charge if, at the time such
application is made, the operator is in compliance with
the provisions of section seventy-seven of this article and
has paid or otherwise appealed all coal mine assess-
ments imposed under article one-a, chapter twenty-two-
a of this code. Applications for extension of such
certificates of approval not submitted within the time
required shall be processed as an application to open or
reopen a mine and shall be accompanied by a fee of ten
dollars.
(c) Not transferable. — Certificates of approval issued pursuant to this section shall not be transferable.

(d) Status of certificate. — The provisions of this section shall be printed on the reverse side of every certificate issued hereunder.

(e) Preinspection. — The district mine inspector shall be contacted for a preinspection of the area proposed for underground mining prior to the issuance of any new opening approval.

§22A-2-71a. Right of miner to refuse to work in an unsafe area or unsafe manner.

Any miner has the right to refuse to work in an area or under conditions which he believes to be unsafe.

§22A-2-77. Monthly report by operator of mine; exception as to certain inactive mines.

On or before the end of each calendar month, the operator of each coal mine shall file with the director a report with respect thereto covering the next preceding calendar month which shall reflect the number of accidents which have occurred at each such mine, the number of persons employed, the days worked and the actual tonnage mined. Such report shall be made upon forms furnished by the director. Other provisions of this section to the contrary notwithstanding, no such report shall be required with respect to any mine on approved inactive status if no employees were present at such mine at any time during the next preceding calendar month.

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

*§64-2-22(9)(6). Commissioner of the department of energy.

(a) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the

*Clerk's Note: This section was also amended by S. B. 748, which passed prior to this act, and S. B. 761, which passed subsequent to it.
legislative rule-making review committee and refiled in
the state register on the sixteenth day of December, one
thousand nine hundred eighty-six, relating to the
commissioner of the department of energy (standards
for certification of coal mine electricians) are
authorized.

(b) The legislative rules filed in the state register on
the fifteenth day of December, one thousand nine
hundred eighty-six, modified by the commissioner of the
department of energy to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twenty-first day of January, one
thousand nine hundred eighty-seven, relating to the
commissioner of the department of energy (safety
training program for prospective underground coal
miners in West Virginia) are authorized.

(c) The legislative rules filed in the state register on
the fifteenth day of December, one thousand nine
hundred eighty-six, modified by the commissioner of the
department of energy to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twenty-first day of January, one
thousand nine hundred eighty-seven, relating to the
commissioner of the department of energy (safety
training program for prospective surface coal miners in
West Virginia) are authorized.

(d) The legislative rules filed in the state register on
the third day of April, one thousand nine hundred
eighty-seven, relating to the department of energy
(standards for certification of underground belt examin-
ers for underground coal mines) are authorized.

CHAPTER 83

(H. B. 2264—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 10, 1987; in effect July 1, 1987. Approved by the Governor.]
thousand nine hundred thirty-one, as amended, relating to the display of registration plates on motor vehicles and display of plates on truck tractors and road tractors designed to pull trailers and semi-trailers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-15. Display of registration plates.

1 Registration plates issued for vehicles required to be registered hereunder shall be attached to the rear thereof except that on truck tractors and road tractors designed and constructed to pull trailers or semi-trailers, the registration plate shall be mounted to the front.

2 Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.

CHAPTER 84

(H. B. 2075—By Delegates Givens and Otte)

[Passed March 13, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing legal heirs and legatees to have the license plates and registrations of deceased persons transferred to them without cost and to use the plates until they regularly expire.
Be it enacted by the Legislature of West Virginia:

That section five, article four, 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 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-5. Transfer by operation of law.

1 Whenever the title or interest of an owner in or to a registered vehicle shall pass to another otherwise than by voluntary transfer, the registration thereof shall expire and the vehicle shall not be operated upon the highways unless and until the person entitled to possession of such vehicle shall apply for and obtain the registration thereof, except that such vehicle may be operated by the person entitled to its possession or his legal representative upon the highways for a distance not exceeding seventy-five miles upon displaying upon such vehicle the registration plates issued to the former owner, or in the event title has become vested in the person holding a lien or encumbrance upon said vehicle, such person may apply to the department for and obtain special plates as may be issued under this chapter to dealers or others and may operate any said repossessed vehicle under such special plates only for purposes of transporting the same to a garage or warehouse or for purposes of demonstrating or selling the same: Provided,

20 That the commissioner is authorized to transfer the plates and registration of a deceased person to his legal heir or legatee without payment of any fee and the legal heir or legatee may keep and use the same license plate until it regularly expires.

25 Upon any transfer the new owner may secure a new registration and certificate of title upon proper application and upon presentation of the last certificate of title if available, and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of title or interest in or to chattels in such case. In the event title has become vested in the person or financial institution holding a lien or encumbrance upon said vehicle, such person or institution need not obtain a new
registration of said vehicle or forward the certificate of
title to the department in order to sell the vehicle, but
the person or institution upon transfer of title or interest
to another shall execute and acknowledge an assignment
and warranty of title upon the certificate of title and
deliver the same not later than thirty days from the date
of sale to the purchaser. The person or institution
holding a lien or encumbrance upon the vehicle who
acquires the vehicle as a result of the lien or encum-
brance and subsequently, within sixty days, sells the
vehicle in satisfaction of the debt creating the lien or
encumbrance, shall not be subject to any privilege tax
or personal property tax on the vehicle imposed by any
other section.

CHAPTER 85
(S. B. 735—Originating in the Senate Committee on Government Organization)

[Passed March 13, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact sections ten and ten-a, article
six, chapter seventeen-a of the code of West Virginia,
one thousand nine hundred thirty-one, as amended,
relating to initial application fees for issuance of a
dealer license certificate or a manufacturer or transpor­
ter license certificate; renewal fees for such certificates;
and increasing the amounts of insurance required of
manufacturers and transporters.

Be it enacted by the Legislature of West Virginia:

That sections ten and ten-a, 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.

PART III. FEES AND DEALER SPECIAL PLATES GENERALLY.

§17A-6-10. Fee required for license certificate; dealer special plates.
§17A-6-10a. Special plates for manufacturers and transporters; fee.
§17A-6-10. Fee required for license certificate; dealer special plates.

(a) The initial application fee for a license certificate to engage in the business of a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, or used parts dealer, or wrecker, or dismantler, shall be two hundred and fifty dollars: Provided, That if an application for a license certificate is denied or refused in accordance with section six of this article, one hundred twenty-five dollars shall be refunded to the applicant. The initial application fee shall entitle the licensee to dealer special plates as prescribed by subsections (b),(c),(d) and (e) of this section.

(b) The annual renewal fee required for a license certificate to engage in the business of new motor vehicle dealer shall be one hundred dollars. This fee shall also entitle such licensee to one dealer's special plate which shall be known as a Class D special plate. Up to nine additional Class D special plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D special plate. Any such licensee who obtains a total of ten Class D special plates as aforesaid shall be entitled to receive additional Class D special plates on a formula basis, that is, one additional Class D special plate per twenty new motor vehicles sold at retail in this state by such licensee or his predecessor during the preceding fiscal year, upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D special plate: Provided, That in the case of a licensee who did not own or operate such business during such preceding fiscal year and who has no predecessor who owned or operated such business during the preceding fiscal year, additional Class D special plates shall be issued, for the ensuing fiscal year only, on a formula basis of one additional Class D special plate per twenty new motor vehicles which such licensee estimates on his application for his license certificate he
will sell at retail in this state during said ensuing fiscal year. Any such licensee may obtain Class D special plates in addition to the ten plates authorized above and any authorized on a formula basis, but the cost of each such Class D special plate shall be thirty dollars.

(c) The annual renewal fee required for a license certificate to engage in the business of used motor vehicle dealer shall be one hundred dollars. This fee shall also entitle such licensee to one dealer's special plate which shall be known as a Class D-U/C special plate. Up to four additional Class D-U/C special plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D-U/C special plate. Any such licensee who obtains a total of five Class D-U/C special plates as aforesaid shall be entitled to receive additional Class D-U/C special plates on a formula basis, that is, one additional Class D-U/C special plate per thirty used motor vehicles sold at retail in this state by such licensee or his predecessor during the preceding fiscal year, upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D-U/C special plate: Provided, That in the case of a licensee who did not own or operate such business during such preceding fiscal year and who has no predecessor who owned or operated such business during the preceding fiscal year, additional Class D-U/C special plates shall be issued, for the ensuing fiscal year only, on a formula basis of one additional Class D-U/C special plate per thirty used motor vehicles which such licensee estimates on his application for his license certificate he will sell at retail in this state during said ensuing fiscal year. Any such licensee may obtain Class D-U/C special plates in addition to the five plates authorized above and any authorized on a formula basis, but the cost of each such Class D-U/C special plate shall be thirty dollars.

(d) The annual renewal fee required for a license certificate to engage in the business of house trailer
dealer or trailer dealer, as the case may be, shall be twenty-five dollars. This fee shall also entitle such licensee to four dealer's special plates which shall be known as Class D-T/R special plates. Additional Class D-T/R special plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D-T/R special plate.

(e) The annual renewal fee required for a license certificate to engage in the business of motorcycle dealer shall be ten dollars. This fee shall also entitle such licensee to two dealer's special plates which shall be known as Class F special plates. Additional Class F special plates shall be issued to any such dealer upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class F special plate.

(f) The annual renewal fee required for a license certificate to engage in the business of used parts dealer, or wrecker, or dismantler, as the case may be, shall be fifteen dollars. Upon payment of the fee for said license certificate, a licensee shall be entitled to up to four special license plates which shall be known as Class WD special plates. Such plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of twenty-five dollars for each such plate. Such plate issued under the provisions of this subsection shall have the words “Towing Only” affixed thereon.

(g) All of the special plates provided for in this section shall be of such form and design and contain such other distinguishing marks or characteristics as the commissioner may prescribe.

§17A-6-10a. Special plates for manufacturers and transporters; fee.

1 (1) The initial application fee for a license certificate to engage in the business of a manufacturer or transporter shall be two hundred and fifty dollars: Provided,
That if an application for a license certificate is denied or refused in accordance with section six of this article, one hundred twenty-five dollars shall be refunded to the applicant. The initial application shall entitle the licensee to manufacturer or transporter plates as prescribed in subsection five of this section.

(2) Notwithstanding any of the other provisions of this article, a manufacturer or transporter may operate or move a vehicle upon the highways of this state solely for purposes of transporting and/or testing the same without first registering each such vehicle upon condition that any such vehicle display thereon, in a manner prescribed by the commissioner, a special plate or plates issued to such manufacturer or transporter as provided in this section.

(3) Any manufacturer or transporter may make application to the commissioner upon a form prescribed by him for a certificate containing a general distinguishing number and for a special plate or plates. The applicant shall also submit proof of his status as a bona fide manufacturer or transporter as may be required by the commissioner.

(4) The commissioner, upon approving any such application, shall issue to the applicant a certificate containing the applicant's name and address and the general distinguishing number assigned to the applicant. The commissioner shall also issue a special plate, or special plates, as applied for, which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate shall also contain a number or symbol identifying the same from every other plate or plates bearing the same general distinguishing number.

(5) The annual renewal fee for a license certificate for a manufacturer or transporter and one special plate shall be one hundred dollars. Additional special plates shall be twenty-five dollars each.

(6) Every manufacturer or transporter shall keep a written record of the vehicle upon which such special plates are used, the time during which each is used on
a particular vehicle, and the location to which the
equipment was delivered, which record shall be open to
inspection by any police officer or employee of the
department.

(7) The provisions of this section shall not apply to
work or service vehicles owned by a manufacturer or
transporter.

(8) Said manufacturer or transporter shall be re-
quired to furnish a certificate of insurance in amounts
which shall be no less than the requirements of section
two, article four, chapter seventeen-d of this code.

CHAPTER 86
(S. B. 541—By Senators Holmes and Manchin)

[Passed March 11, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article six,
chapter seventeen-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the department of motor vehicles; to temporary
registration plates issued by dealers; and increasing
from three calendar days to five working days the time
period after issuance in which dealers must submit
notification of issuance to the department.

Be it enacted by the Legislature of West Virginia:

That section fifteen, 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-6-15. Temporary registration plates or markers.

1 (a) In order to permit a vehicle which is sold to a
purchaser by a dealer to be operated on the streets and
highways pending receipt of the annual registration
plate from the department for such vehicle, the commis-
sioner may, subject to the limitations and conditions
hereinafter set forth, deliver temporary vehicle regis-
tration plates or markers to dealers who in turn may,
subject to the limitations and conditions hereinafter set
forth, issue the same to purchasers of vehicles, but such
purchasers must comply with the pertinent provisions
of this section.

(b) Application by a dealer to the commissioner for
such temporary registration plates or markers shall be
made on the form prescribed and furnished by the
commissioner for such purpose and shall be accompan-
ied by a fee of three dollars for each such temporary
registration plate or marker. No refund or credit of fees
paid by dealers to the commissioner for temporary
registration plates or markers shall be allowed, except
that in the event the commissioner discontinues the
issuance of such temporary plates or markers, dealers
returning temporary registration plates or markers to
the commissioner may petition for and be entitled to a
refund or a credit thereof. No temporary registration
plates or markers shall be delivered by the commis-
sioner to any dealer in house trailers only, and no such
temporary plates or markers shall be issued for or used
on any house trailer for any purpose.

(c) Every dealer who has made application for and
received temporary registration plates or markers shall
maintain in permanent form a record of all temporary
registration plates or markers delivered to him, a record
of all temporary registration plates or markers issued
by him, and a record of any other information pertain-
ing to the receipt or the issuance of temporary registra-
tion plates or markers which the commissioner may
require. Each such record shall be kept for a period of
at least three years from the date of the making thereof.
Every dealer who issues a temporary registration plate
or marker shall, within five working days after he issues
such plate or marker, send to the department a copy of
the temporary registration plate or marker certificate
properly executed by such dealer and the purchaser. No
temporary registration plates or markers may be
delivered to any dealer until such dealer has fully
accounted to the commissioner for the temporary
registration plates or markers last delivered to such
dealer, by showing the number issued to purchasers by
such dealer and any on hand.

(d) A dealer shall not issue, assign, transfer or deliver
a temporary registration plate or marker to anyone
other than the bona fide purchaser of the vehicle to be
registered; nor shall a dealer issue a temporary
registration plate or marker to anyone possessed of an
annual registration plate for a vehicle which has been
sold or exchanged, except a dealer may issue a tempor-
ary registration plate or marker to the bona fide
purchaser of a vehicle to be registered who possesses an
annual registration plate of a different class and makes
application to the department to exchange such annual
registration plate of a different class in accordance with
the provisions of section one, article four of this chapter;
nor shall a dealer lend to anyone, or use on any vehicle
which he may own, a temporary registration plate or
marker. It shall be unlawful for any dealer to issue any
temporary registration plate or marker knowingly
containing any misstatement of fact, or knowingly to
insert any false information upon the face thereof.

(e) Every dealer who issues temporary registration
plates or markers shall affix or insert clearly and
indelibly on the face of each temporary registration
plate or marker the date of issuance and expiration
thereof, and the make and motor or serial number of the
vehicle for which issued.

(f) If the commissioner finds that the provisions of this
section or his directions are not being complied with by
a dealer, he may suspend the right of such dealer to
issue temporary registration plates or markers.

(g) Every person who is issued a temporary registra-
tion plate or marker shall execute and send an appli-
cation for an annual registration plate to the depart-
ment, previous to or not later than fifteen days from the
day on which the temporary registration plate or
marker is issued to such purchaser.

(h) Every person to whom a temporary registration
86 plate or marker has been issued shall permanently
87 destroy such temporary registration plate or marker
88 immediately upon receiving the annual registration
89 plate for such vehicle from the department: Provided,
90 That if the annual registration plate is not received
91 within forty days of the issuance of the temporary
92 registration plate or marker, the owner shall, notwith-
93 standing the fact that the annual registration plate has
94 not been received, immediately and permanently
95 destroy the temporary registration plate or marker:
96 Provided, however, That not more than one temporary
97 registration plate or marker shall be issued to the same
98 bona fide purchaser for the same vehicle.

99 (i) A temporary registration plate or marker shall
100 expire and become void upon the receipt of the annual
101 registration plate from the department or upon the
102 rescission of the contract to purchase the vehicle in
103 question, or upon the expiration of forty days from the
104 date of issuance, depending upon whichever event shall
105 first occur.

CHAPTER 87
(Com. Sub. for S. B. 466—Originating in the Senate Committee on Transportation)

[Passed March 17, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and six, article
sixteen, chapter seventeen-c of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating generally to the mandatory inspec-
tion of motor vehicles; the powers and duties of the
superintendent of the department of public safety with
respect thereto; the designation of and the issuance of
permits to official inspection stations; the issuance of
stickers or decals as official certificates of inspection
and approval; the charge to be made by the department
for each such sticker or decal; the disposition of the
funds derived therefrom, the purposes for which such
funds may be expended and the transfer of any
remaining funds to the state road fund; increasing the maximum allowable fee to be charged for inspection of such motor vehicles by official inspection stations; and requiring that necessary headlight adjustments be included within such charge.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

§17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

The superintendent of the department of public safety shall be responsible for the inspection as provided in this article and shall prescribe requirements and qualifications for official inspection stations. He shall select and designate such stations and shall issue permits therefor and furnish instructions and all necessary forms thereto for the inspection of vehicles as herein required and the issuance of official certificates of inspection and approval. The certificate of inspection shall be a paper sticker or decal to be affixed to the windshield of a motor vehicle, shall be serially numbered and shall properly identify the official inspection station by which issued. A charge of one dollar per sticker shall be charged by the department of public safety to the inspection station, and the funds so received shall be deposited into the state treasury and credited to the account of the department of public safety for application in the administration and enforcement of the provisions of this article. Any balance remaining in the fund on the last day of June of each fiscal year, not required for operating expenses, construction, repairs or alterations of police barracks for the ensuing fiscal year
and for the administration and enforcement of the provisions of this article, shall be transferred to the state road fund. The superintendent is authorized to exchange stickers or to make refunds to official inspection stations for stickers on hand when permits are revoked or when, for any reason, the stickers become obsolete.

Application for permit shall be made upon an official form prescribed by the superintendent and permits shall be granted only when the superintendent is satisfied that the station is properly equipped, and has competent personnel to make such inspections and adjustments and that the inspections and adjustments will be properly conducted. The superintendent, before issuing a permit, may require the applicant to file a bond with surety approved by the superintendent, conditioned that such applicant, as a station operator, will make compensation for any damage to a vehicle during an inspection or adjustment due to negligence on the part of such station operator or employees thereof.

The superintendent shall properly supervise and cause inspections to be made of such stations and shall revoke and require the surrender of the permit issued to a station which he finds is not properly equipped or conducted. He shall maintain and post at his office and at such other places as he may select lists of all stations holding permits and of those whose permits have been revoked.

§17c-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

No permit for an official inspection station shall be assigned or transferred or used at any location other than therein designated and every said permit shall be posted in a conspicuous place at the station location designated.

The person operating any such station shall issue a certificate of inspection and approval, upon an official form, to the owner of a vehicle upon inspecting such vehicle and determining that its equipment required
hereunder is in good condition and proper adjustment, but otherwise no certificate shall be issued, except such as may be issued pursuant to section two of this article.

When required by the superintendent, a record and report shall be made of every inspection and every certificate so issued.

A fee of not more than seven dollars may be charged for an inspection and any necessary headlight adjustment to proper focus, not including any replacement parts required, and the issuance of such certificate, but the imposition of such charge shall not be mandatory.

CHAPTER 88
(S. B. 403—By Senator Brackenrich)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to operation of a motor vehicle without a valid certificate of inspection and approval; licensed dealers not required to display such certificate upon dealer owned vehicles; penalties.

Be it enacted by the Legislature of West Virginia:

That section nine, article sixteen, 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 16. INSPECTION OF VEHICLES.

§17C-16-9. Operation without certificate or failure to produce certificate; penalty for misdemeanor.

It is a misdemeanor for any owner or operator, or both owner and operator, of any vehicle required to be inspected under subsection (a), section four of this article, to operate or permit to be operated such vehicle
without having displayed thereon a current and valid
certificate of inspection and approval or fail to produce
same upon demand of any authorized person as design-
ated under subsection (a), section four of this article:
Provided, That a dealer licensed to sell new vehicles
under the provision of article six, chapter seventeen-a
of this code shall not be required to display a certificate
of inspection and approval upon any new vehicle
belonging to such dealer when such vehicle has not been
titled or delivered to a purchaser, and when such car
is not to be used in the demonstrator fleet or otherwise
routinely driven on the highways or roads of this state.

Unless another penalty is by the laws of this state
provided, every person convicted of a misdemeanor for
operating a vehicle without having displayed thereon a
current and valid certificate of inspection and approval
or for failure to produce such certificate upon demand
of an authorized person shall be punished by a fine of
not more than one hundred dollars.

CHAPTER 89
(S. B. 734—Originating in the Senate Committee on Government Organization)
[Passed March 14, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section two, article two,
chapter seventeen-d of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to an abstract of operating record, deleting reference to
vehicle registration, and increasing the fee to be
collected for such abstract.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ADMINISTRATION OF LAW.

§17D-2-2. Commissioner to furnish abstract of operating
record; fee for abstract.

1 The commissioner shall upon request furnish any
2 person a certified abstract of the operating record of any
3 person subject to the provisions of this chapter, and if
4 there shall be no record of any conviction of such person
5 of a violation of any law relating to the operation of a
6 motor vehicle or of any injury or damage caused by such
7 person, the commissioner shall so certify. The commis-
8 sioner shall collect five dollars for each abstract.

CHAPTER 90
(H. B. 2062—By Delegate Sattes)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, six and eight, article four, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to proof of financial responsibility in the case of suspension or revocation of an operator's license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-5. Suspension for nonpayment of judgments; exceptions.
§17D-4-6. Suspension to continue until judgments paid and proof given; effect of discharge in bankruptcy.
§17D-4-8. Installment payment of judgments; defaults.

§17D-4-5. Suspension for nonpayment of judgments; exceptions.

(a) The commissioner upon receipt of a certified copy
1 of a judgment, shall forthwith suspend the license and
2 registration and any nonresident's operating privilege of
3 any person against whom such judgment was rendered,
4 except as hereinafter otherwise provided in this section
5 and in section eight of this article.
(b) If the judgment creditor consents in writing, in such form as the commissioner may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the commissioner, in his discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section eight of this article.

(c) The commissioner shall not, however, suspend a license, registration, or nonresident's operating privilege of any person if the insurance applicable to such person or the vehicle being operated by him was with a company which was authorized to transact business in this state and which, subsequent to an accident involving the owner or driver and prior to settlement of the claim therefor went into liquidation so that no benefit accrued to the owner or driver by reason of having provided such insurance.

§17D-4-6. Suspension to continue until judgments paid and proof given; effect of discharge in bankruptcy.

(a) Such license, registration and nonresident's operating privileges shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided subject to the exemptions stated in sections five and eight of this article.

(b) A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article.

§17D-4-8. Installment payment of judgments; default.

(a) A judgment debtor upon five days' notice to the judgment creditor may, for the sole purpose of giving authority to the commissioner to authorize such judg-
ment debtor to operate a motor vehicle thereafter, apply
to the court in which such judgment was rendered for
the privilege of paying such judgment in installments
and the court, in its discretion and without prejudice to
any other legal remedies which the judgment creditor
may have, may so order and fix the amounts and times
of payment of the installments.

(b) The commissioner shall not suspend a license,
registration, or nonresident's operating privilege, and
shall restore any license, registration, or nonresident's
operating privilege suspended following nonpayment of
a judgment, when the judgment debtor obtains such an
order permitting the payment of such judgment in
installments, and while the payment of any said
installment is not in default.

(c) In the event the judgment debtor fails to pay any
installment as specified by such order, then upon notice
of such default, the commissioner shall forthwith
suspend the license, registration, or nonresident's
operating privilege of the judgment debtor until such
judgment is satisfied, as provided in this chapter.

CHAPTER 91
(Com. Sub. for H. B. 2096—By Delegates Reid and Whitt)

[Passed January 20, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eight of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated
section five-a, relating to municipal elections generally;
the holding of special elections in cases wherein all of
the municipal officers or governing body of any Class
IV town or village have been removed from office by
order of a court of competent jurisdiction; setting forth
the time and manner in which such election shall be
held; the calling and holding of party conventions with
respect thereto; providing for the publication of notice
of such convention; the term of office of such persons
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elected to office at such special elections; procedures relating to such elections; the applicability of other statutes; and providing for the expiration of the provisions of said section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-5a. Special election of officers when all municipal officers removed by order of court; procedures applicable to such special elections; terms of office of persons elected.

(a) Any other provision of this code to the contrary notwithstanding a special election shall be held in every Class IV town or village wherein a vacancy has been created in all of the elective offices of such town or village by reason of the removal from office of all of the occupants thereof by order of any court of competent jurisdiction upon a petition of quo warranto or other proceeding and where such order has designated or appointed a person or persons to temporarily manage or govern the affairs of such town or village. Such election shall be held on a Tuesday not earlier than ninety days nor later than one hundred twenty days from the date of the entry of the order removing such persons from office, which order shall hereinafter be referred to as the order of removal.

(b) Within seventy days of the entry of the order of removal, as provided in subsection (a) of this section, the members of the several political parties which fielded candidates at the next preceding election at which the officers and governing board of such town or village were elected, shall meet in separate conventions on the same day, which date shall be designated in the order
by which the officers and governing body of the affected
town or village were removed from office. If the order
does not so provide, then the person designated in the
order of removal shall designate such date. Notice of the
convention date, time, place and subject matter shall be
published in a Class I legal advertisement in a news-
paper of general circulation serving the town or village.
At such convention such parties shall nominate their
respective candidates for mayor, recorder, municipal
council or such other officers as may be required to be
elected by the charter of such town or village or as may
be required by general law in the absence of any such
charter provision. At such conventions each of such
parties shall nominate one ballot commissioner, two
election commissioners, one poll clerk and two persons
to serve as members of a board of canvassers who shall
serve in their respective capacities at the election
required by this section. Such parties may also select
alternate nominees for such election officials.

The names of the candidates and election officials so
chosen shall be certified by the chairman and secretary
of the party convention to the court which ordered the
removal from office of such municipal officers within
three days next following the sine die adjournment of
the convention. Such certification shall also include the
names of all of the nominated election officials chosen
to represent each party at the special election to be held
pursuant to this section and their respective alternates,
if any. From the nominees for election officials, one
ballot commissioner, one election commissioner and one
poll clerk shall be chosen in the manner specified by the
person designated in the order of removal to conduct or
oversee such election.

(c) Such person so designated in the order of removal
shall perform all of the functions otherwise assigned by
general law and municipal ordinance to the municipal
recorder and council for the conduct of elections. Such
person shall also serve as one of three ballot commis-
ers for the purpose of preparing ballots and conducting
absentee voting. Further, such person shall also see to
the training of the designated election officials, the
testing of voting equipment, if necessary, the proper
delivery of election supplies and shall serve as a member
of the board of canvassers for the tabulating of the
results of the special election required by this section.
A number of observers, representing the public at large
or the respective political parties fielding candidates at
such election, as shall not interfere with the orderly
conduct or canvassing thereof shall be permitted.

(d) All ballots to be used in such special election shall
be delivered to the person designated to conduct and
oversee the special election mandated herein not later
than the twenty-ninth day next preceding the date of
such special elections. All absentee ballots shall be cast
not earlier than the twenty-eighth day next preceding
the election nor later than five o'clock p. m., of the
Saturday next preceding such election.

(e) If the affected Class IV town or village normally
elects its officers for terms of two years and if the
special election required by this section shall be held
within one hundred twenty days of the next regularly
scheduled municipal election to be held in such Class IV
town or village, then such next regularly scheduled
municipal election shall not be held and the persons
elected at such special election shall hold their respec-
tive offices until the termination of the next ensuing two
year term.

(f) (1) The provisions of this section shall have general
application and shall also be applicable to any circum-
stance or Class IV town or village wherein all of the
elective officers thereof have been removed from their
respective offices and such offices are vacant on the
effective date of this section.

(2) All of the provisions of this code relating to the
conduct of municipal elections not in conflict with this
section shall govern such special elections.

(g) The provisions of this section shall expire and be
of no force or effect from and after the first day of July
in the year one thousand nine hundred eighty-nine.
AN ACT to amend and reenact section twelve, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of commissioners to municipal firemen's civil service commissions.

Be it enacted by the Legislature of West Virginia:

That section twelve, article fifteen, 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 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENT.


In every municipality having a paid fire department, there shall be a "Firemen's Civil Service Commission." The commission shall consist of three commissioners, one of whom shall be appointed by the mayor of the municipality; one of whom shall be appointed by the local international association of fire fighters in the event that said local exists in the municipality, or in case no such local exists in the municipality, then by the local central body of the West Virginia Federation of Labor AFL-CIO in the event that said local body exists in the municipality, or in case that no such central body exists in the municipality, then by the West Virginia Federation of Labor AFL-CIO; and the third shall be appointed by the local chamber of commerce, or if there be none, by a local businessmen's association. The individuals appointed commissioners shall be qualified voters of the municipality for which they are appointed; and at least two of said commissioners shall be individuals in full sympathy with the purposes of the civil service provisions of this article. Not more than two of
the said commissioners, at any one time, shall be adherents of the same political party. Of the three original appointments in each municipality, the first commissioner shall be appointed by the mayor and shall serve for six years from the date of his appointment; the second commissioner shall be appointed by the local trades board, or in the absence of such board, by the international association of fire fighters, and shall serve for four years from the date of his appointment; and the third commissioner shall be appointed by the local chamber of commerce or local businessmen's association and shall serve for two years from the date of his appointment. In the event there is no local chamber of commerce or local businessmen's association at the time any appointment is to be made by it, such appointment shall be made by the other two commissioners by mutual agreement. After the original appointments, all appointments shall be made for periods of four years each by the appointing authority hereinbefore designated. In the event that any commissioner of said civil service commission shall cease to be a member thereof by virtue of death, final removal or other cause, a new commissioner shall be appointed to fill the unexpired term of said commissioner within ten days after said ex-commissioner shall have ceased to be a member of said commission. Such appointment shall be made by the officer or body who in the first instance appointed the commissioner who is no longer a member of the commission. Each year the three members of the commission shall, together, elect one of their number to act as president of the commission, who shall serve as president for one year. The mayor may, at any time, remove any commissioner or commissioners for good cause, which shall be stated in writing and made a part of the records of the commission: Provided, That once the mayor has removed any commissioner, the mayor shall within ten days thereafter file in the office of the clerk of the circuit court of the county in which the municipality or the major portion of the territory thereof is located a petition setting forth in full the reason for said removal and praying for the confirmation by said circuit court of the action of the mayor in
so removing the said commissioner. A copy of said petition shall be served upon the commissioner so removed simultaneously with its filing in the office of the clerk of the circuit court and shall have precedence on the docket of said court and shall be heard by said court as soon as practicable upon the request of the removed commissioner or commissioners. All rights herein vested in said circuit court may be exercised by the judge thereof in vacation. In the event that no term of the circuit court is being held at the time of the filing of said petition, and the judge thereof cannot be reached in the county wherein the petition was filed, said petition shall be heard at the next succeeding term of said circuit court, whether regular or special, and the commissioner or commissioners so removed shall remain removed until a hearing is had upon the petition of the mayor. The court or the judge thereof in vacation shall hear and decide the issues presented by said petition. The mayor or commissioner or commissioners, as the case may be, against whom the decision of the court or the judge thereof in vacation shall be rendered, shall have the right to petition the supreme court of appeals for a review of the decision of the circuit court or the judge thereof in vacation as in other civil cases. In the event that the mayor shall fail to file his petition in the office of the clerk of the circuit court, as hereinbefore provided, within ten days after the removal of said commissioner or commissioners, such commissioner or commissioners shall immediately resume his or their position or positions as a member or members of the firemen's civil service commission.

Any resident of the municipality shall have the right at any time to file charges against and seek the removal of any member of the firemen's civil service commission of such municipality. Such charges shall be filed in the form of a petition in the office of the clerk of the circuit court of the county in which the municipality or the major portion of the territory thereof is located, and a copy of said petition shall be served upon the commissioner or commissioners sought to be removed. Said petition shall be matured for hearing and heard by said circuit court or the judge thereof in vacation in the same
manner as civil proceedings in the circuit courts of this
state are heard, and the party against whom the circuit
court’s decision is rendered shall have the right to
petition the supreme court of appeals for a review of the
action of the circuit court, as in other civil cases.

No commissioner shall hold any other office (other
than the office of notary public) under the United States,
this state or any municipality, county or other political
subdivision thereof; nor shall any commissioner serve on
any political committee or take any active part in the
management of any political campaign.

CHAPTER 93
(H. B. 2850—By Delegate Schifano)

[Passed March 12, 1987: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five, six, seven,
eight, nine, ten and thirteen, article twenty-two, chapter
eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, all relating to general
retirement systems for Class I, II and III cities and
enabling cities to improve benefits in the following
areas: Calculation of average salary, participation of
employees hired after age sixty, pretax employee
contributions, additional service credit for members
who served in the armed forces, crediting of interest on
contributions, early retirement at age fifty-five, timing
of election of options, ad hoc cost-of-living increases,
workers’ compensation offsets for disability and death
benefits, elimination of maximum disability pension and
elimination of maximum survivor pension.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six, seven, eight, nine, ten and
thirteen, article twenty-two, chapter eight of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted, all to read as follows:
ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

PART II. GENERAL RETIREMENT SYSTEMS FOR CLASS I, II AND III CITIES.

For the purpose of sections two through fifteen of this article:

(a) “Prior service credit” shall mean the number of years that the member has been in the service of the city prior to the effective date of the employees retirement and benefit fund;

(b) “Earned service credit” shall mean the number of years that the member has contributed to the employees retirement and benefit fund;

(c) “Total service credit” shall mean the total of all prior service credit and all earned service credit;

(d) “Fund” shall mean the employees retirement and benefit fund;

(e) “Board” shall mean the board of trustees of the fund;

(f) “Member” shall mean an eligible employee of the city, who is a member of the fund;

(g) “Total disability in line of duty” shall mean total and permanent disablement from performing any work for pay, whether for the city by which employed at date
of disability or other employer, which shall be caused by accidental injury sustained in the course of the operations usual to his employment and while in line of duty, and shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the usual place of employment or elsewhere in connection with or in relation to his usual and customary employment;

(h) "Total disability not in line of duty" shall mean total and permanent disablement from performing any work for pay, whether for the city by which employed at date of disability or other employer, from any cause other than that set forth in subdivision (g) of this section;

(i) The term "actuarial equivalent" shall mean any annuity of equal value to the accumulated contributions, annuity or benefit when computed upon the basis of the actuarial tables in use by the fund;

(j) "Monthly salary" shall mean the amount earned each month by a member as an employee of the city: Provided, That to and including June thirty, one thousand nine hundred sixty-seven, the maximum amount of salary to be considered hereunder for purposes of contributions and in the computation of benefits shall be four hundred dollars per month; and

(k) "Average salary" shall mean the highest annual average salary earned by a member during a period of five consecutive years within the total service of the member, subject to a maximum amount of four hundred dollars per month to and including June thirty, one thousand nine hundred sixty-seven, and no such maximum amount after such date, but effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that average salary be based on a three consecutive year period.

§8-22-5. Employees eligible for participation in fund.

Employees eligible for participation in the fund shall include all employees who are employed by the city on
a permanent basis. The following employees, however, shall not be eligible for participation in the fund:

1. Appointive members of administrative boards and commissions, except employees of such boards and commissions;

2. Individuals employed under contract for a definite period or for the performance of a particular or special service;

3. Employees serving on a part-time basis of less than one-half time;

4. Policemen and firemen covered by a policemen’s pension and relief fund or firemen’s pension and relief fund;

5. Employees who are paid in part by the state, county or other governmental agency, and only in part by the city;

6. Employees who are past sixty years of age on the effective date of the fund;

7. Employees who are hired after the effective date of the fund and who were past sixty years of age at the time they were so employed. Effective the first day of January, one thousand nine hundred eighty-seven, a city may disregard this exception.

In case of doubt, the board of trustees of the fund may make determination as to any individual’s eligibility to become a member of the fund.

All employees eligible for participation at the effective date of the fund shall become members of the fund, unless they file a written election not to become a member within thirty days after the effective date of the fund.

Effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that employees who did not participate in the fund when first eligible, or who were not permitted to join the fund when they were first hired due to the prior age sixty limitation, may now participate. Such members may purchase prior service by paying into the fund the
employee contributions they would have contributed had they been in the fund plus interest at the rate of six percent annually. Members shall be given two years to pay these contributions.

§8-22-6. Contributions; prior, earned and total service credits; service breaks.

1 Until June thirty, one thousand nine hundred sixty-seven, each member shall pay into the fund six percent of his monthly salary up to four hundred dollars a month. After June thirty, one thousand nine hundred sixty-seven, each member shall contribute six percent of his monthly salary without any such maximum limitation. Effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that contributions made by a member shall be before-tax, as permitted by section 414(h)(2) of the Internal Revenue Code. Each member shall continue to make such contributions until such time as such member retires or until he has contributed to the fund for a period of thirty-five years, that is, has thirty-five years of "earned service credit.”

For prior service, each participating employee, in the employ of the city on the effective date of the fund, shall be credited, as of such date, with a prior service credit equal to the period or periods of service that the member has rendered to the city prior to the effective date of the fund. Any employee who is in the employ of the city on the effective date of the fund and who becomes a member of the fund shall be entitled to prior service credit even though such prior service was not continuous. Any individual who is not in the employ of the city on the effective date of the fund but who has been employed by the city in the past shall be entitled to prior service credit if he returns to the service of the city within two years from the date of the termination of his service and becomes a member of the fund within such two-year period.

Effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that members who have been honorably discharged from the military
shall receive up to two years prior service credit for military service prior to their employment with the city.

A member upon separation from the service shall be entitled to withdraw his contributions without interest in lieu of any benefits to which he may be entitled. A city may provide that contributions are credited with interest at the rate of six percent compounded annually from the first day of January, one thousand nine hundred eighty-seven. If such employee returns to the service of the city within two years and becomes a member of the fund, he shall be considered as a new employee and shall have forfeited all prior service credits unless he shall repay to the fund in cash at the time of reemployment the amount of money which he has withdrawn plus four percent interest compounded annually on said amount during the time he was separated from the service, but effective the first day of January, one thousand nine hundred eighty-seven, a city may require six percent interest. If, however, the break in service of such member is more than two years, he shall not be entitled to any prior service credit nor shall he be entitled to redeposit withdrawals but he shall reenter the fund as a new member.


(a) After the effective date of the fund, any member of the fund who has at least ten years of continuous total service credit shall receive a vested right to a retirement pension which he may exercise upon or after attainment of age sixty. When he has attained the age of sixty years he may, at his option, apply for a retirement pension, the amount thereof to be determined in accordance with the provisions of subsection (e) of this section.

(b) Retirement for all members of the fund shall be compulsory at the age of seventy subject to the following conditions: The employee may be permitted to continue in the service if he so desires and if his services are still valuable to the city. Whether an employee's services are valuable at the age of seventy shall be determined by the appointing officer of the city. If he determines that such services are valuable, his determination must be
certified to the board for approval. If the board
approves, the employee may continue in the service of
the city. The appointing officer shall annually certify to
the board relative to the ability and competency of all
employees over age seventy. The amount of any pension
under the provisions of this subsection shall be deter-
mined in accordance with the provisions of subsection
(e) of this section.

(c) Effective the first day of January, one thousand
nine hundred eighty-seven, a city may provide that any
member of the fund who has at least ten years of
continuous total service credit shall receive a vested
right to a retirement pension which he may exercise
upon or after attainment of age fifty-five. When he has
attained the age of fifty-five years he may, at his option,
apply for a retirement pension, the amount thereof to
be determined in accordance with the provisions of
subsection (e) of this section, reduced by one quarter of
one percent for each month (three percent per year) by
which his retirement date precedes age sixty, except
that if his age plus years of continuous service credit is
equal to or greater than eighty-five, the benefit shall not
be reduced.

(d) Although he has not attained the age of sixty, any
member who has thirty-five years' total service and who
becomes so physically or mentally disabled as to render
him unfit for the performance of the duties of the
position he occupies shall be entitled to an annual
retirement pension, the amount thereof to be determined
in accordance with the provisions of subsection (e) of
this section.

(e) A member of the fund, upon retirement, shall be
entitled to the following annual retirement pension,
payable in twelve monthly installments:

For thirty-five years of total service credit to and
including twenty-four years of total service credit, fifty
percent of average salary plus one and two-thirds
percent of average salary per year of service for each
year above twenty-three years;

For twenty-three years of total service credit, fifty
percent of average salary: *Provided*, That if a member has twenty-three years of total service credit he shall be entitled to a minimum retirement pension of one hundred dollars per month;

For twenty-two years of total service credit, forty-nine percent of average salary;

For twenty-one years of total service credit, forty-eight percent of average salary;

For twenty years of total service credit, forty-seven percent of average salary;

For nineteen years of total service credit, forty-five percent of average salary;

For eighteen years of total service credit, forty-three percent of average salary;

For seventeen years of total service credit, forty-one percent of average salary;

For sixteen years of total service credit, thirty-nine percent of average salary;

For fifteen years of total service credit, thirty-six percent of average salary;

For fourteen years of total service credit, thirty-three percent of average salary;

For thirteen years of total service credit, thirty-one percent of average salary;

For twelve years of total service credit, twenty-nine percent of average salary; and

For ten years of continuous total service credit, twenty-five percent of average salary.

The rate of a retirement pension shall be prorated for any fractional part of the total service credit of an employee of less than a full year.

(f) With the condition that no optional benefit shall be effective if the member dies within thirty days after the
92 effective date of his retirement, such member may elect
93 at least one year prior to such effective date of his
94 retirement to receive a lesser retirement pension, on a
95 joint and last survivor basis, in order to provide, on an
96 actuarial equivalent basis, an annuity to a designated
97 beneficiary under any of the following two options:

Option 1. Upon his death while on retirement, his
99 lesser retirement pension shall be continued throughout
100 the life of and paid to such individual having an
101 insurable interest in his life, as he shall have named in
102 a written designation duly acknowledged and filed with
103 the board.

Option 2. Upon his death while on retirement, one
105 half of his lesser retirement pension shall be continued
106 throughout the life of and paid to such individual having
107 an insurable interest in his life as he shall have named
108 in a written designation duly acknowledged and filed
109 with the board.

Effective the first day of January, one thousand nine
111 hundred eighty-seven, a city may provide that an
112 election may be made at any time prior to the date his
113 benefits commence.

(g) A member who has attained the age of sixty years
115 and who has less than ten years' total service credit shall
116 be entitled to an annuity which shall be the actuarial
117 equivalent of his total accumulation account at the time
118 of his retirement.

(h) Effective the first day of January, one thousand
120 nine hundred eighty-seven, a city may provide that if an
121 actuarial valuation of the plan determines that the
122 required city contribution is less than six percent of
123 payroll, then the board of trustees may provide ad hoc
124 cost-of-living increases to retired members and benefici-
125 aries, provided such change does not increase the city
126 cost to an amount greater than six percent of payroll.
127 Such cost-of-living increases are limited to the increase
128 in the national consumer price index.

§8-22-8. Disability pensions; annuities.

1 A member may qualify for a disability pension under
2 any one of the following mutually exclusive provisions:
(1) If a member receives total disability in line of duty, he shall be entitled during the time of his disability to a monthly disability pension equal to fifty percent of the monthly salary of the member at date of disability: Provided, That the minimum payment shall be one hundred dollars per month. Any benefits payable from the retirement and benefit fund shall be reduced by benefits payable from workers' compensation due to the total disability of the member.

(2) If a member receives total disability not in line of duty while an employee of the city after he has had at least ten years' total service credit and such member is not entitled to a retirement pension under the provisions of section seven of this article, he shall be entitled during the time of his disability to one half of the retirement pension to which he would have been entitled under the provisions of said section seven had he been sixty years of age at date of disability and had elected to take retirement: Provided, That he shall be entitled to a minimum payment of fifty dollars per month and a maximum payment of one hundred dollars per month. Effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that the maximum payment be three hundred dollars per month.

(3) If a member becomes so physically or mentally disabled as to render him unfit for the performance of the duties of the position he occupies, but his disability does not constitute either total disability in line of duty or total disability not in line of duty, and such member has less than ten years' total service credit, he shall be entitled to an annuity which shall be the actuarial equivalent of his total accumulation at the date of his disability.

The board of trustees of the fund shall order a periodic reexamination of members of the fund receiving a disability pension, and if the disability no longer exists the payment thereunder shall be discontinued: Provided, That no such reexamination of any such member shall be ordered as aforesaid after such member attains the age of sixty years.

(a) A beneficiary or beneficiaries of a deceased member, which member was not receiving a retirement pension under the provisions of section seven of this article at the date of his death, may qualify for death benefits under either of the following mutually exclusive provisions:

(1) If the member died as a result of personal injury or disease arising out of and in the course of his employment with the city, the surviving spouse shall be entitled during widowhood or widowerhood to a monthly benefit equal to thirty-three and one-third percent of the final monthly salary of the member, but not to exceed one hundred and twenty-five dollars per month. In the event there be no surviving spouse, or if remarriage occurs before the youngest child attains age eighteen, each child under age eighteen shall be entitled until age eighteen to a monthly benefit equal to twenty percent of the member's final monthly salary, subject to a total payment to all such children of fifty percent of such final monthly salary, or one hundred twenty-five dollars per month, whichever is the lesser. If there be no surviving spouse or children under age eighteen, the deceased member's dependent father or mother or both, the question of dependency to be determined by the board, shall each be entitled until death to a monthly payment equal to one sixth of the deceased member's final monthly salary, but the payment to either parent shall not exceed fifty dollars per month. Effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that the above maximum benefit limitations of this section nine shall no longer apply. Any benefits payable from the retirement and benefit fund shall be reduced by benefits payable from workers' compensation due to the death of the member.

(2) If the member died from any cause other than that stated in subdivision (1) of this subsection, and such member at the date of his death had ten or more years' total service credit, his beneficiary or beneficiaries shall be entitled, for a period not to exceed ten years, to death benefits in accordance with the retirement pension table.
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41 contained in section seven of this article. The death
42 benefits shall be paid to such individual or individuals
43 having an insurable interest in the member's life as such
44 member shall have nominated in a designation filed
45 with the board. As to any spouse beneficiary, the
46 marriage must have occurred at least one year prior to
47 the death of the member in order that the spouse may
48 be eligible for benefits under this subdivision (2).

49 (b) If a member receiving a retirement pension under
50 the provisions of section seven of this article at the date
51 of his death dies with a spouse or beneficiary surviving
52 (concerning which retirement pension the optional
53 benefit provisions set forth in subsection (f) of said
54 section seven are not applicable), and such member had
55 been receiving such retirement pension for less than ten
56 years, such surviving spouse or beneficiary shall be
57 entitled to receive death benefits equivalent to the
58 deceased member's retirement pension for the remain-
59 ing period of ten years dating from the date of the
60 member's retirement. The death benefits shall be paid
61 to such individual or individuals having an insurable
62 interest in the member's life as such member shall have
63 nominated in a designation filed with the board; but a
64 surviving spouse shall not be entitled to death benefits
65 under the provisions of this subsection unless such
66 surviving spouse was married to the member before the
67 date of his retirement and such marriage took place at
68 least one year prior to the date of the death of the
69 member. If the surviving spouse remarries, such
70 spouse's death benefits shall be terminated and shall not
71 be resumed upon subsequent change in the marital
72 status of such spouse.

73 (c) If a member dies with less than ten years' total
74 service credit so that he was not entitled to a retirement
75 pension during life, the member's total contributions to
76 the fund, without interest, shall be returned to such
77 individual or individuals having an insurable interest in
78 the member's life as such member shall have nominated
79 in a designation filed with the board, and in the absence
80 of any such designation, to the member's estate.
§8-22-10. Contributions by city.

1 Effective the first day of January, one thousand nine hundred eighty-seven, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members, will be sufficient to meet the normal cost of the fund including the cost of administration and amortize any actuarial deficiency over a period of not more than forty years, but for those funds in existence on the first day of January, one thousand nine hundred eighty-seven, its actuarial deficiency, if any, shall not be amortized over a period longer than that which remains under its current schedule. For purposes of determining this minimum financial objective (1) the value of the fund’s assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and (2) all costs, deficiencies, rate of interest and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which in aggregate are reasonable, taking into account the experience of the fund and reasonable expectations, and which in combination offer the qualified actuary’s best estimate of anticipated experience under the fund. If as a result of this legislation a municipality’s financial commitment to the fund is materially increased, the municipality may elect to phase in this increase over the five fiscal years commencing the first day of January, one thousand nine hundred eighty-seven.

§8-22-13. Reports by board of trustees.

1 The board of trustees for each retirement fund shall have regularly scheduled actuarial valuation reports prepared by a qualified actuary.

An actuarial valuation report shall be prepared at least once every three years commencing with the later of (1) the first day of July, one thousand nine hundred eighty-seven, or (2) three years following the most recently prepared actuarial valuation report.

For purposes of this section the term “qualified actuary” means only an actuary who is a member of the
11 society of actuaries or the American academy of
12 actuaries. The qualified actuary shall be designated a
13 fiduciary and shall discharge his duties with respect to
14 a fund solely in the interest of the members and
15 members' beneficiaries of that fund. In order for the
16 standard of this section to be met, the qualified actuary
17 shall certify that the actuarial valuation report is
18 complete and accurate and that in his opinion the
19 technique and assumptions used are reasonable and
20 meet the requirements of this section of this article.

21 The board of trustees shall submit to the governing
22 body an annual report showing the condition of the fund
23 under its control. It shall certify in such report the
24 amount of accumulated cash and securities in the fund
25 and shall present a full account of the operation of the
26 system.

CHAPTER 94

(Com. Sub. for H. B. 2167—By Delegate Given)

[Passed March 14, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend article twenty-two, chapter eight of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section,
designated section twenty-six-a, relating to supplemental
pension benefits for retired policemen, firemen and
their spouses, and tying those supplemental benefits to
increases in the consumer price index.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICE-
MEN'S PENSION AND RELIEF FUND; FIRE-
MEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.
§8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.

1 (a) Commencing with the fiscal year beginning on the first day of July, one thousand nine hundred eighty-seven, any member receiving benefits and any surviving spouse of a member receiving benefits under the provisions of this article, is entitled to receive a supplemental pension benefit if the member or the surviving spouse meets the entitlement of subsection (b) of this section.

(b) Entitlement to supplemental benefits under this section is established if any member or surviving spouse receives less than six hundred dollars per month in pension benefits under this article during the fiscal year ending on the thirtieth day of June, one thousand nine hundred eighty-seven, less than seven hundred dollars per month in pension benefits under this article during the fiscal year ending on the thirtieth day of June, one thousand nine hundred eighty-eight, less than eight hundred dollars per month in pension benefits under this article during the fiscal year ending on the thirtieth day of June, one thousand nine hundred eighty-nine, less than nine hundred dollars per month in pension benefits under this article during the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety, less than one thousand dollars per month in pension benefits under this article during the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-one; entitlement means that the member or surviving spouse shall receive the minimum pension benefit defined in subsection (c) of this section.

(c) The member or surviving spouse entitled by subsection (b) of this section shall receive as a supplemental pension benefit an amount based on a percentage increase equal to any increase in the consumer price index as calculated by the United States Department of Labor, Bureau of Statistics, for the preceding year. The supplemental pension benefit payable under the provisions of this section shall be paid in equal monthly installments and the amount of the benefit so paid shall
be considered in determining such member's or spouse's eligibility for the supplemental pension benefit for any subsequent fiscal year.

(d) This section applies only through the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-two, and must be reviewed and reenacted prior to that date.

(e) This section shall be construed liberally to effectuate the purpose of establishing minimum pension benefits under this article for members and surviving spouses.

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CHAPTER 95

(Com. Sub. for H. B. 2141—By Delegates Roop and Hawse)

[Passed March 2, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two; and to amend and reenact section three, article seven, chapter sixty-one of said code, all relating to the training and certification of national guard security guards as law-enforcement officers; granting such security guards the power to make arrests on military installations; and making an exception to the prohibition against carrying dangerous weapons for members of the organized militia of the state while such members are employed as security guards to safeguard military property under the command of the adjutant general.

Be it enacted by the Legislature of West Virginia:

That article one-b, 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 twenty-two; and that section three, article seven, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter
15. Public Safety.
61. Crimes and Their Punishment.
CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1B. NATIONAL GUARD.

§15-1B-22. Military facilities; security guards; qualifications; duties; powers.

(a) Notwithstanding any provision of this code to the contrary, bona fide members of the West Virginia National Guard assigned by the adjutant general to function as security guards to safeguard military property of the state or of the United States who have successfully completed a training program in law enforcement approved by the adjutant general and the superintendent of the West Virginia Department of Public Safety, shall be deemed to have met all the requirements for certification as a law-enforcement officer set forth in section five, article twenty-nine, chapter thirty of this code. Those members of the West Virginia National Guard who are so designated as security guards and who have successfully completed such training program are hereby empowered:

(1) To make arrests on military installations of the state or of the United States for any violations of the law of this state or of the United States occurring on any such military installation; and

(2) To cooperate with state and local authorities in detecting and apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state or of the United States, or of any ordinance of any municipality of this state if such is committed or attempted to be committed on a military installation in this state.

(b) Any security guard, duly appointed by the adjutant general, knowing or having reasonable cause to believe that a person has violated the law while situate on a military installation, may make complaint in writing before any court or officer having jurisdiction and procure a warrant for such person.

(c) For the purposes of this section, the term “military installation” shall mean a facility under the command of the adjutant general.
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-3. Exceptions as to prohibition against carrying deadly weapons.

Nothing in this article shall prevent any person from carrying any such weapon as is mentioned in the first section of this article, in good faith and not having felonious purposes, upon his own premises; nor shall anything herein prevent a person from carrying any such weapon, unloaded, from the place of purchase to his home or residence, or to a place of repair and back to his home or residence; nor shall anything herein prevent a guard at the West Virginia penitentiary duly appointed in conformity with section five, article five, chapter twenty-eight of the code of West Virginia, from carrying any such weapon while on duty; nor shall anything herein prevent a bona fide member of the organized militia of this state, or of the reserve officers component of the United States army, from carrying such weapon while in the performance of his official duties as such; nor shall anything herein prevent any member of the organized militia of this state, whether designated a civilian or otherwise, and whether in the active service of the state or on state duty or otherwise, from carrying such weapon during the hours such member is employed as a security guard to safeguard military property of the state or of the United States and while such member is on facilities under the command of the adjutant general; nor shall anything herein prevent any member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state, or from the United States for the purpose of target practice, from carrying any revolver or pistol mentioned in this article, unloaded, from his home or place of residence to a place of target practice, and from any such place of target practice back to his home or residence, or using any such weapon at such place of target practice in training and improving his skill in the use of such weapons; but nothing herein shall be construed to authorize any employee of any person, firm or corporation doing
business in this state to carry, on or about the premises of such employer, any such pistol, or other weapon mentioned in this article, for which a license is herein required, without having first obtained the license and given the bond as herein provided.

The term "security guard" as used in this section shall not be limited to only those persons with a military designation as such security guard.

Notwithstanding any other provision of this article or any other provision of this code, any resident, nonresident or unnaturalized person may lawfully possess, transport, carry and use any firearm he is permitted to use for hunting under any valid license he has been issued by the department of natural resources and which he holds in his possession. At all times such person shall comply with all of the requirements of law set forth in this code and the rules and regulations promulgated thereunder pertaining to possessing, transporting, carrying and using firearms for hunting.

CHAPTER 96
(S. B. 741—Originating in the Senate Committee on the Judiciary)
[Passed March 12, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Nonintoxicating Beer Act; unlawful acts of brewers or manufacturers such as price discrimination between distributors and wholesalers; requiring the filing of brewery or dock price of beer with the commissioner with such prices becoming effective no sooner than fourteen days after filing; providing specific criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section twenty, 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.
§11-16-20. Unlawful acts of brewers or manufacturers; criminal penalties.

(a) It shall be unlawful:

(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 granting of more favorable prices, allowances, rebates, refunds, commissions, discounts or services to one West Virginia distributor or wholesaler than to another.

(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 until fourteen days after receipt of same by the commissioner: Provided, That any price reductions shall remain in effect not less than thirty days.

(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.

CHAPTER 97

(H. B. 2246—By Delegates Minard and McKinley)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article one, chapter twenty-two of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article eight of said chapter; to amend and reenact section three, article thirteen of said chapter; and to amend and reenact sections two and twenty-six, article one, chapter twenty-two-b of said code, all relating to oil and gas; clarifying that permits, certifications, waivers, bonds, orders or authorizations issued by or favoring the department of mines, department of natural resources and other boards are continued; clarifying that after one discovery deep well is drilled it establishes a pool; clarifying the spacing order; clarifying the commissioner's considerations before establishing a drilling unit; continuing the oil and gas inspectors examining board following an audit by the joint committee on government operations; requiring operators to furnish performance bonds, letters of credit, and other forms of security prior to the issuance of a permit to drill oil or gas wells; requiring assignee or transferee to be bonded before such assignment or transfer.

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

That section sixteen, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section seven, article eight of said chapter be amended and reenacted; that section three, article thirteen of said chapter be amended and reenacted; and that sections two and twenty-six, 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**

1. Title; Purpose; Department of Energy.

8. Oil and Gas Conservation.

13. Oil and Gas Inspectors' Examining Board.
ARTICLE 1. TITLE; PURPOSES; DEPARTMENT OF ENERGY.

§22-1-16. Jurisdiction vested in department; cooperation with other governments and agencies; continuation of permits, etc.

Except as otherwise expressly provided in this chapter or in chapters twenty-two-a or twenty-two-b of this code, jurisdiction over the issuance of regulations, or any and all permits and other governmental authorizations required or to be required in all matters pertaining to the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources in this state including all safety, conservation, land, water, waste disposal, reclamation, and environmental regulations, permits and authorizations of such activities called for pursuant to articles five, five-a, five-d and five-f, chapter twenty of this code, and the enforcement and implementation thereof is vested exclusively in the department of energy. The department of energy is hereby designated as the lead regulatory agency for this state for all purposes of federal legislation relating to such activities.

The department of energy shall exercise all power and duties vested in the director of the department of natural resources pursuant to subsection (g), section seven, article five-e, chapter twenty of this code, and in the administrator of the office of oil and gas, and shallow gas well review board pursuant to subsection (h), section seven, article five-e, chapter twenty of this code.

All permits, certifications, waivers, bonds, orders or authorizations heretofore issued by or favoring the department of mines, department of natural resources, or any of the boards or commissions continued in effect by this chapter shall be continued in effect but become subject to the provisions of this chapter, chapter twenty-two-a and chapter twenty-two-b of this code. All permits, certifications, waivers, bonds, orders or authorizations heretofore issued or favoring by the department of mines or department of natural resources shall become subject to the jurisdiction of the depart-
ment of energy. All permits, certifications, waivers, bonds, orders or authorizations heretofore issued by or favoring any of the boards or commissions continued in effect by the provisions of this chapter shall remain subject to the jurisdiction of those boards or commissions.

ARTICLE 8. OIL AND GAS CONSERVATION.

§22-8-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.

(a) Drilling units.

(1) After one discovery deep well has been drilled establishing a pool, an application to establish drilling units may be filed with the commissioner by the operator of such discovery deep well or by the operator of any lands directly and immediately affected by the drilling of such discovery deep well, or subsequent deep wells in said pool, and the commissioner shall promptly schedule a hearing on said application. Each application shall contain such information as the commissioner may prescribe by reasonable rules and regulations promulgated by him in accordance with the provisions of section five of this article.

(2) Upon the filing of an application to establish drilling units, notice of the hearing shall be given by the commissioner. Each notice shall specify the date, time and place of hearing, describe the area for which a spacing order is to be entered, and contain such other information as is essential to the giving of proper notice.

(3) On the date specified in such notice, the commissioner shall hold a public hearing to determine the area to be included in such spacing order and the acreage to be contained by each drilling unit, the shape thereof, and the minimum distance from the outside boundary of the unit at which a deep well may be drilled thereon. At such hearing the commissioner shall consider:

(i) The surface topography and property lines of the lands underlaid by the pool to be included in such order;
(ii) The plan of deep well spacing then being employed or proposed in such pool for such lands;

(iii) The depth at which production from said pool has been found;

(iv) The nature and character of the producing formation or formations, and whether the substance produced or sought to be produced is gas or oil or both;

(v) The maximum area which may be drained efficiently and economically by one deep well; and

(vi) Any other available geological or scientific data pertaining to said pool which may be of probative value to the commissioner in determining the proper deep well drilling units therefor.

To carry out the purposes of this article, the commissioner shall, upon proper application, notice and hearing as herein provided, and if satisfied after such hearing that drilling units should be established, enter an order establishing drilling units of a specified and approximately uniform size and shape for each pool subject to the provisions of this section.

(4) When it is determined that an oil or gas pool underlies an area for which a spacing order is to be entered, the commissioner shall include in his order all lands determined or believed to be underlaid by such pool and exclude all other lands.

(5) No drilling unit established by the commissioner shall be smaller than the maximum area which can be drained efficiently and economically by one deep well: Provided, That if at the time of a hearing to establish drilling units, there is not sufficient evidence from which to determine the area which can be drained efficiently and economically by one deep well, the commissioner may enter an order establishing temporary drilling units for the orderly development of the pool pending the obtaining of information necessary to determine the ultimate spacing for such pool.

(6) An order establishing drilling units shall specify the minimum distance from the nearest outside boun-
dary of the drilling unit at which a deep well may be drilled. The minimum distance provided shall be the same in all drilling units established under said order with necessary exceptions for deep wells drilled or being drilled at the time of the filing of the application. If the commissioner finds that a deep well to be drilled at or more than the specified minimum distance from the boundary of a drilling unit would not be likely to produce in paying quantities or will encounter surface conditions which would substantially add to the burden or hazard of drilling such deep well, or that a location within the area permitted by the order is prohibited by the lawful order of any state agency or court, the commissioner is authorized after notice and hearing to make an order permitting the deep well to be drilled at a location within the minimum distance prescribed by the spacing order. In granting exceptions to the spacing order, the commissioner may restrict the production from any such deep well so that each person entitled thereto in such drilling unit shall not produce or receive more than his just and equitable share of the production from such pool.

(7) An order establishing drilling units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the commissioner from time to time, to include additional lands determined to be underlaid by such pool or to exclude lands determined not to be underlaid by such pool. An order establishing drilling units may be modified by the commissioner to permit the drilling of additional deep wells on a reasonably uniform pattern at a uniform minimum distance from the nearest unit boundary as provided above. Any order modifying a prior order shall be made only after application by an interested operator and notice and hearing as prescribed herein for the original order: Provided, That drilling units established by order shall not exceed one hundred sixty acres for an oil well or six hundred forty acres for a gas well.

(8) After the date of the notice of hearing called to establish drilling units, no additional deep well shall be commenced for production from the pool until the order
establishing drilling units has been made, unless the
commencement of the deep well is authorized by order
of the commissioner.

(9) The commissioner shall, within forty-five days
after the filing of an application to establish drilling
units for a pool subject to the provisions of this section,
either enter an order establishing such drilling units or
dismiss the application.

(10) As part of the order establishing a drilling unit,
the commissioner shall prescribe just and reasonable
terms and conditions upon which the royalty interests
in the unit shall, in the absence of voluntary agreement,
be deemed to be integrated without the necessity of a
subsequent order integrating the royalty interests.

(b) Pooling of interests in drilling units.

(1) When two or more separately owned tracts are
embraced within a drilling unit, or when there are
separately owned interests in all or a part of a drilling
unit, the interested persons may pool their tracts or
interests for the development and operation of the
drilling unit. In the absence of voluntary pooling and
upon application of any operator having an interest in
the drilling unit, and after notice and hearing, the
commissioner shall enter an order pooling all tracts or
interests in the drilling unit for the development and
operation thereof and for sharing production therefrom.
Each such pooling order shall be upon terms and
conditions which are just and reasonable, and in no
event shall drilling be initiated on the tract of an
unleased royalty owner without his written consent.

(2) All operations, including, but not limited to, the
commencement, drilling or operation of a deep well,
upon any portion of a drilling unit for which a pooling
order has been entered, shall be deemed for all purposes
the conduct of such operations upon each separately
owned tract in the drilling unit by the several owners
thereof. That portion of the production allocated to a
separately owned tract included in a drilling unit shall,
when produced, be deemed for all purposes to have been
actually produced from such tract by a deep well drilled thereon.

(3) Any pooling order under the provisions of this subsection (b) shall authorize the drilling and operation of a deep well for the production of oil or gas from the pooled acreage; shall designate the operator to drill and operate such deep well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging and abandoning such deep well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net oil or gas acreage in the pooled tracts owned or under lease to each owner; and shall make provisions for payment of all reasonable costs thereof, including a reasonable charge for supervision and for interest on past-due accounts, by all those who elect to participate therein.

(4) No drilling or operation of a deep well for the production of oil or gas shall be permitted upon or within any tract of land unless the operator shall have first obtained the written consent and easement therefor, duly acknowledged and placed of record in the office of the county clerk, for valuable consideration of all owners of the surface of such tract of land, which consent shall describe with reasonable certainty, the location upon such tract, of the location of such proposed deep well, a certified copy of which consent and easement shall be submitted by the operator to the commissioner.

(5) Upon request, any such pooling order shall provide just and equitable alternatives whereby an owner of an operating interest who does not elect to participate in the risk and cost of the drilling of a deep well may elect:

(i) Option 1. To surrender his interest or a portion thereof to the participating owners on a reasonable basis and for a reasonable consideration, which, if not agreed upon, shall be determined by the commissioner; or

(ii) Option 2. To participate in the drilling of the deep well on a limited or carried basis on terms and
conditions which, if not agreed upon, shall be determined by the commissioner to be just and reasonable.

(6) In the event a nonparticipating owner elects Option 2, and an owner of any operating interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling and operating, a deep well for the benefit of such nonparticipating owner as provided in the pooling order, then such operating owner shall be entitled to the share of production from the tracts or portions thereof pooled accruing to the interest of such nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of such tracts or portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(7) If a dispute shall arise as to the costs of drilling and operating a deep well, the commissioner shall determine and apportion the costs, within ninety days from the date of written notification to the commissioner of the existence of such dispute.

ARTICLE 13. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22-13-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuation following audit.

(a) There is hereby continued an oil and gas inspectors' examining board consisting of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the Senate. Members may be removed only for the same causes and like manner as elective state officers. One member of the board who shall be the representative of the public, shall be a professor in the petroleum engineering department of the school of
mines at West Virginia University appointed by the dean of said school; two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators; and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The director for the division of oil and gas shall be an ex officio member of the board and shall serve as secretary of the board without additional compensation, but he shall have no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose term expires may be reappointed by the governor.

Each member of the board shall receive seventy-five dollars per diem while actually engaged in the performance of the work of the board, and shall receive mileage at the rate of not more than fifteen cents for each mile actually traveled going from the home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

The public member shall serve as chairman of the board.

Members of the board, before performing any duty, shall take and subscribe to the oath required by section five, article four of the constitution of West Virginia.

The board shall meet at such times and places as shall be designated by the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of two members, or on the written request of said director or the commissioner. Notice of each meeting shall be given in writing to each member
by the secretary at least five days in advance of the
meeting. Three voting members shall constitute a
quorum for the transaction of business.

(b) In addition to other powers and duties expressly
set forth elsewhere in this article, the board shall:

(1) Establish, and from time to time revise, forms of
application for employment as an oil and gas inspector
and supervising inspector and forms for written
examinations to test the qualifications of candidates,
with such distinctions, if any, in the forms for oil and
gas inspector and supervising inspector as the board
may from time to time deem necessary or advisable;

(2) Adopt and promulgate reasonable rules and
regulations relating to the examination, qualification
and certification of candidates for appointment, and
relating to hearings for removal of inspectors or the
supervising inspector, required to be held by this article.
All of such rules and regulations shall be printed and
a copy thereof furnished by the secretary of the board
to any person upon request;

(3) Conduct, after public notice of the time and place
thereof, examinations of candidates for appointment. By
unanimous agreement of all members of the board, one
or more members of the board or an employee of the
department of energy may be designated to give to a
candidate the written portion of the examination;

(4) Prepare and certify to said director and the
commissioner a register of qualified eligible candidates
for appointment as oil and gas inspectors or as superv-
vising inspectors, with such differentiation, if any,
between the certification of candidates for oil and gas
inspectors and for supervising inspectors as the board
may from time to time deem necessary or advisable. The
register shall list all qualified eligible candidates in the
order of their grades, the candidate with the highest
grade appearing at the top of the list. After each
meeting of the board held to examine such candidates
and at least annually, the board shall prepare and
submit to the said director and the commissioner a
revised and corrected register of qualified eligible
candidates for appointment, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment, (c) who have been passed over for appointment for three years, (d) who have become ineligible for appointment since the board originally certified that such persons were qualified and eligible for appointment, or (e) who, in the judgment of at least three members of the board, should be removed from the register for good cause;

(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets and other papers of all applicants for appointment for such period of time as may be established by the board. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;

(6) Issue a letter or written notice of qualification to each successful eligible candidate;

(7) Hear and determine proceedings for the removal of inspectors or the supervising inspector in accordance with the provisions of this article;

(8) Hear and determine appeals of inspectors or the supervising inspector from suspension orders made by said director pursuant to the provisions of section two, article one, chapter twenty-two-b of this code: Provided, That in order to appeal from any order of suspension, an aggrieved inspector or supervising inspector shall file such appeal in writing with the oil and gas inspectors' examining board not later than ten days after receipt of the notice of suspension. On such appeal the board shall affirm the action of said director unless it be satisfied from a clear preponderance of the evidence that said director has acted arbitrarily;

(9) Make an annual report to the governor concerning the administration of oil and gas inspection personnel in the state service; making such recommendations as the board considers to be in the public interest; and
(10) Render such advice and assistance to the director of the division of oil and gas as he shall from time to time determine necessary or desirable in the performance of his duties.

(c) 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 oil and gas inspectors' examining board within the department of energy should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the oil and gas inspectors' examining board within the department of energy shall continue to exist until the first day of July, one thousand ninety-three.

CHAPTER 22B. OIL AND GAS.

ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22B-1-2. Director—Powers and duties generally; departmental records open to public; inspectors.

(a) The director of the division of oil and gas shall have as his duty the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles three and four of this chapter, subject to review and approval of the commissioner.

(b) The director of the division of oil and gas is authorized to enact rules and regulations necessary to effectuate the above stated purposes, subject to review and approval by the commissioner.

(c) The director shall have full charge of the oil and gas matters set out in this article and in articles three and four of this chapter, subject always to the direct supervision and control of the commissioner of the department of energy. In addition to all other powers
and duties conferred upon him, the director shall have
the power and duty to:

(1) Supervise and direct the activities of the division
of oil and gas and see that the purposes set forth in
subsections (a) and (b) of this section are carried out;

(2) Employ a supervising oil and gas inspector and oil
and gas inspectors upon approval by the commissioner;

(3) Supervise and direct such oil and gas inspectors
and supervising inspector in the performance of their
duties;

(4) Suspend for good cause any oil and gas inspector
or supervising inspector without compensation for a
period not exceeding thirty days in any calendar year;

(5) Prepare report forms to be used by oil and gas
inspectors or the supervising inspector in making their
findings, orders and notices, upon inspections made in
accordance with this chapter;

(6) Employ a hearing officer and such clerks, steno-
graphers and other employees, as may be necessary to
carry out his duties and the purposes of the division of
oil and gas and fix their compensation;

(7) Hear and determine applications made by owners,
well operators and coal operators for the annulment or
revision of orders made by oil and gas inspectors or the
supervising inspector, and to make inspections, in
accordance with the provisions of this article and
articles three and four of this chapter;

(8) Cause a properly indexed permanent and public
record to be kept of all inspections made by himself or
by oil and gas inspectors or the supervising inspector;

(9) Make annually a full and complete written report
to the commissioner as he may from time to time
request, so that the commissioner can complete the
preparation of the commissioner's annual report to the
governor of the state;

(10) Conduct such research and studies as the com-
missioner shall deem necessary to aid in protecting the
health and safety of persons employed within or at
potential or existing oil or gas production fields within
this state, to improve drilling and production methods
and to provide for the more efficient protection and
preservation of oil and gas-bearing rock strata and
property used in connection therewith;

(11) Perform any and all acts necessary to carry out
and implement the state requirements established by 92
Statutes at Large 3352, et seq., the "Natural Gas Policy
Act of 1978," which are to be performed by a designated
state jurisdictional agency regarding determinations
that wells within the state qualify for a maximum
lawful price under certain categories of natural gas as
set forth by the provisions of the said "Natural Gas
Policy Act of 1978";

(12) Collect a filing and processing fee of forty dollars
for each well, for which a determination of qualification
to receive a maximum lawful price under the provisions
of the "Natural Gas Policy Act of 1978" is sought from
the director; all revenues from such fees to be placed in
the general revenue fund of the state;

(13) Collect a permit fee of two hundred fifty dollars
for each permit application filed after the tenth day of
June, one thousand nine hundred eighty-three: Provided,
That no permit application fee shall be required when
an application is submitted solely for the plugging or
replugging of a well. All application fees required
hereunder shall be in addition to any other fees required
by the provisions of this article;

(14) Perform all other duties which are expressly
imposed upon him by the provisions of this chapter, as
well as duties assigned to him by the commissioner;

(15) Perform all duties as the permit issuing authority
for the state in all matters pertaining to the exploration,
development, production, storage and recovery of this
state's oil and gas in accordance with section thirteen,
article one, chapter twenty-two of this code;

(16) Adopt rules and regulations in accordance with
section thirteen, article one, chapter twenty-two of this
code with respect to the issuance, denial, retention, suspension or revocation of permits, authorizations and requirements of this chapter, which rules and regulations shall assure that the regulations, permits and authorizations issued by the director are adequate to satisfy the purposes of this chapter and chapter twenty-two of this code particularly with respect to the consolidation of the various state and federal programs which place permitting requirements on the exploration, development, production, storage and recovery of this state's oil and gas: *Provided,* That notwithstanding any provisions of this chapter or chapter twenty-two of this code to the contrary, the water resources board shall have the sole authority pursuant to section three-a, article five-a, chapter twenty of this code to promulgate rules and regulations setting standards of water quality applicable to waters of the state;

(17) Perform such acts as may be necessary or appropriate to secure to this state the benefits of federal legislation establishing programs relating to the exploration, development, production, storage and recovery of this state's oil and gas, which programs are assumable by the state.

(d) The director shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and the supervising inspector shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land may request the director to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the director, all oil and gas
inspectors and the supervising inspector in making inspections or obtaining information.

(e) Oil and gas inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall be responsible for the inspection of all wells or well sites or other oil or gas facilities in their respective districts as often as may be required in the performance of their duties.

(f) All records of the division shall be open to the public.

§22B-1-26. Performance bonds; corporate surety or other security.

(a) No permit shall be issued pursuant to this article unless a bond as described in subsection (d) of this section which is required for a particular activity by this article is or has been furnished as provided in this section.

(b) A separate bond as described in subsection (d) of this section may be furnished for a particular oil or gas well, or for a particular well for the introduction of liquids for the purposes provided in section twenty-five of this article. A separate bond as described in subsection (d) of this section shall be furnished for each well drilled or converted for the introduction of liquids for the disposal of pollutants or the effluent therefrom. Every such bond shall be in the sum of ten thousand dollars, payable to the state of West Virginia, conditioned on full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing and stimulating of oil and gas wells (or, if applicable, with all laws, rules and regulations relating to drilling or converting wells for the introduction of liquids for the purposes provided for in section twenty-five of this article or for the introduction of liquids for the disposal of pollutants or the effluent therefrom) and to the plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the director.

(c) When an operator makes or has made application for permits to drill or stimulate a number of oil and gas
wells or to drill or convert a number of wells for the introduction of liquids for the purposes provided in section twenty-five of this article, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifty thousand dollars, payable to the state of West Virginia, and conditioned as aforesaid in subsection (b) of this section.

(d) The form of the bond required by this article shall be approved by the director and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities) letters of credit, establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the amount of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose of which the deposit is made when the permit is issued. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the amount of the bond.

(e) When an operator has furnished a separate bond
from a corporate bonding or surety company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas or both, its operator may deposit with the director cash from the sale of the oil or gas or both until the total deposited is ten thousand dollars. When the sum of the cash deposited is ten thousand dollars, the separate bond for the well shall be released by the director. Upon receipt of such cash, the director shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all interest and income which may be earned on the cash deposited so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of the well for which the cash was deposited and so long as he has furnished all reports and information as may be required by the director. If the cash realized from the sale of oil or gas or both from the well is not sufficient for the operator to deposit with the director the sum of ten thousand dollars within one year of the day the well started producing, the corporate or surety company which issued the bond on the well may notify the operator and the director of its intent to terminate its liability under its bond. The operator then shall have thirty days to furnish a new bond from a corporate bonding or surety company or collateral securities or other forms of security, as provided in the next preceding paragraph of this section with the director. If a new bond or collateral securities or other forms of security are furnished by the operator, the liability of the corporate bonding or surety company under the original bond shall terminate as to any acts and operations of the operator occurring after the effective date of the new bond or the date the collateral securities or other forms of security are accepted by the treasurer of the state of West Virginia. If the operator does not furnish a new bond or collateral securities or other forms of security, as provided in the next preceding paragraph of this section, with the director, he shall
immediately plug, fill and reclaim the well in accordance with all of the provisions of law, rules and regulations applicable thereto. In such case, the corporate or surety company which issued the original bond shall be liable for any plugging, filling or reclamation not performed in accordance with such laws, rules and regulations.

(f) Any separate bond furnished for a particular well prior to the effective date of this chapter shall continue to be valid for all work on the well permitting prior to the effective date of this chapter; but no permit shall hereafter be issued on such a particular well without a bond complying with the provisions of this section. Any blanket bond furnished prior to the effective date of this chapter shall be replaced with a new blanket bond conforming to the requirements of this section, at which time the prior bond shall be discharged by operation of law; and if the director determines that any operator has not furnished a new blanket bond, the director shall notify the operator by certified mail, return receipt requested, of the requirement for a new blanket bond; and failure to submit a new blanket bond within sixty days after receipt of the notice from the director shall work a forfeiture under subsection (i) of this section of the blanket bond furnished prior to the effective date of this chapter.

(g) Any such bond shall remain in force until released by the director and the director shall release the same when he is satisfied the conditions thereof have been fully performed. Upon the release of any such bond, any cash or collateral securities deposited shall be returned by the director to the operator who deposited same.

(h) Whenever the right to operate a well is assigned or otherwise transferred, the assignor or transferor shall notify the department of the name and address of the assignee or transferee by certified mail, return receipt requested, not later than five days after the date of the assignment or transfer. No assignment or transfer by the owner shall relieve the assignor or transferor of the obligations and liabilities unless and until the assignee or transferee files with the department the well name...
and the permit number of the subject well, the county and district in which the subject well is located, the names and addresses of the assignor or transferor, and assignee or transferee, a copy of the instrument of assignment or transfer accompanied by the applicable bond, cash, collateral security or other forms of security, described in section twelve, fourteen, twenty-three or twenty-six of this article, and the name and address of the assignee's or transferee's designated agent if assignee or transferee would be required to designate such an agent under section six of this article, if assignee or transferee were an applicant for a permit under said section six. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the department of such termination and designate a new agent.

Upon compliance with the requirements of this section by assignor or transferor and assignee or transferee, the director shall release assignor or transferor from all duties and requirements of this article, and the deputy director shall give written notice of release unto assignor or transferor of any bond and return unto assignor or transferor any cash or collateral securities deposited pursuant to section twelve, fourteen, twenty-three or twenty-six of this article.

(i) If any of the requirements of this article or rules and regulations promulgated pursuant thereto or the orders of the director have not been complied with within the time limit set by the violation notice as defined in sections three, four and five of this article, the performance bond shall then be forfeited.

(j) When any bond is forfeited pursuant to the provisions of this article or rules and regulations promulgated pursuant thereto, the director shall give notice to the attorney general who shall collect the forfeiture without delay.

(k) All forfeitures shall be deposited in the treasury of the state of West Virginia in the special reclamation fund as defined in section twenty-nine of this article.
AN ACT to amend and reenact section three, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public notice of meetings; specifying the manner and time by which notice must be filed with the secretary of state; and providing for judicial invalidation for noncompliance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-3. Proceedings to be open; public notice of meetings.

Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public. Any governing body may make and enforce reasonable rules and regulations for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend, and this article shall not be construed to prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: Provided, That persons who desire to address the governing body shall not be required to register to address said body more than fifteen minutes prior to time the scheduled meeting is to commence.

Each governing body shall promulgate rules by which the time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings
are made available, in advance, to the public and news
media, except in the event of an emergency requiring
immediate official action.

Each governing body of the executive branch of the
state shall file a notice of any meeting with the secretary
of state for publication in the state register. Each notice
shall state the time, place and purpose of the meeting.
Each notice shall be filed in a manner to allow each
notice to appear in the state register at least five days
prior to the date of the meeting.

In the event of an emergency requiring immediate
official action, any governing body of the executive
branch of the state may file an emergency meeting
notice at any time prior to the meeting. The emergency
meeting notice shall state the time, place and purpose
of the meeting and the facts and circumstances of the
emergency.

Upon petition by any adversely affected party any
court of competent jurisdiction may invalidate any
action taken at any meeting for which notice did not
comply with the requirements of this section.

CHAPTER 99

(Com. Sub. for S. B. 189—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed March 12, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article one,
chapter five-b of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to
contracts for operation of commissaries, restaurants and
other establishments; limiting contracts to ten years’
duration; renewal at option of the commissioner;
limitation of contract by commissioner; contracts for
development of revenue producing facilities within the
state parks and recreational facilities; level of invest­
ment of contracts; term of investment contracts;
reservation of option to purchase, purchase price
determination; requiring that contracts for a term of ten
years or longer shall be subject to public hearing,
prescribing the location of such hearing and requiring notice thereof; and providing for certain findings to be made by the commissioner of commerce.

Be it enacted by the Legislature of West Virginia:

That section fifteen, 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-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of commissioner; termination of contract by the commissioner; contracts for development of revenue producing facilities within the state parks and recreational facilities; level of investment of contracts; term of investment contract; reservation of option to purchase; purchase price determination.

1 (a) When it is deemed necessary by the commissioner to enter into a contract with a person, firm or corporation for the operation of a commissary, restaurant, recreational facility or other such establishment within the state parks and public recreation system, such contract shall be for a duration not to exceed ten years, but a contract so made may provide for an option to renew at the commissioner's discretion for an additional term or terms not to exceed ten years at the time of renewal.

2 Any contract entered into by the commissioner shall provide an obligation upon the part of the operator that he maintain a level of performance satisfactory to the commissioner, and shall further provide that any such contract may be terminated by the commissioner in the event he determines that such performance is unsatisfactory and has given the operator reasonable notice thereof.

3 (b) When it is deemed necessary by the commissioner to enter into a contract with a person, firm or corporation for the development of revenue producing facilities
within the state parks and public recreation system for
a period of more than ten years, such contract shall be
at least a one million dollar level of investment for such
revenue producing facilities. The term of the investment
contract may be up to twenty-five years of duration at
the determination of the commissioner and based upon
the amount of the investment and the achievement of the
environmental, recreational and cultural goals of the
state park or recreation areas system of this state.

Any investment contract entered into by the commis-
sioner shall reserve an option to purchase the investment
at any time during the term of the contract upon
reasonable notice to the investor. The option to purchase
shall provide that the purchase price of the revenue
producing facilities shall be determined by the average
of three appraisals by three certified members of
appraisal institutes.

(c) No contract of a term greater than ten years shall
be entered into by the commissioner until a public
hearing is held in the vicinity of the location of the
proposed facility with at least two weeks notice of such
hearing by Class I publication pursuant to section two,
article three, chapter fifty-nine of this code. At such
hearing the commissioner shall present in writing the
following findings and supporting statements therefor:

(i) That the proposed development will not deprive
users of the state park or recreational area of existing
recreational facilities in any significant fashion;

(ii) That the proposed development will not have
substantial negative impact on the environmental,
scenic or cultural qualities of the said park or area; and

(iii) That the proposed development, considered as a
whole, is of benefit to the recreational goals of the state.
code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to preneed burial contracts; setting forth definitions; redefining the term “department” to mean the office of the attorney general instead of the department of labor; requiring licensure; revising terminology consistent with definition changes; providing for the disposition of proceeds; procedure for administration; promulgation of rules; removing certain fidelity bond requirements; prescribing the use of income on trust accounts; enforcement of contracts; limitations; providing for the appointment of a board of trustees; fidelity bond required; duties of trustee; permitting an irrevocable contract in all instances and removing public assistance requirement therefor; contract approved by department; fees; use of the moneys collected as fees; providing for the performance, transfer and assignment of such contracts; credit life insurance; and assumption of obligations by successor to contract seller.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, seven and eight, article fourteen, 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 14. PRENEED BURIAL CONTRACTS.

§47-14-2. Definitions.
§47-14-4. Agents and employees; licenses required; fee to go to department.
§47-14-5. Disposition of proceeds; trusts; procedure for administration, department to promulgate rules and regulations.
§47-14-7. Income on trust accounts.
§47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trusts; contracts may be irrevocable; “Preneed Guarantee Fund” established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.

§47-14-2. Definitions.

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

3 (1) “Burial goods” means all merchandise supplied in regard to burial, or entombment in a mausoleum or
inurnment in a columbarium, but does not include those services actually performed by a cemetery acting only as such, or the sale by any person of cemetery lots, land or interests therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(2) "Contract beneficiary" means any person specified or implied in a preneed funeral contract, upon whose death funeral services, funeral goods or burial goods shall be performed, provided or delivered.

(3) "Contract buyer" means any person, whether or not a contract beneficiary, who purchases goods or services pursuant to a preneed funeral contract but shall not include any person other than a natural person.

(4) "Contract seller" or "seller" means a person, his agent or his employee, who sells, makes available or provides preneed funeral contracts.

(5) "Department" means the office of the attorney general.

(6) "Funds" means moneys or other consideration received pursuant to the sale of a preneed funeral contract, including interest accrued or earned thereon.

(7) "Funeral goods" means those items of merchandise sold or offered for sale directly to the public by any person which will be used in connection with a funeral or alternative for final disposition of human remains, but does not include those services actually performed by a cemetery acting only as such, or the sale by the cemetery of cemetery lots, land or interest therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(8) "Funeral services" means those services usually performed by a funeral service licensee, including, but not limited to, care and preparation of human remains
and coordinating rites and ceremonies in connection with the disposition of human remains carried out at the request of any individual responsible for funeral and disposition arrangements.

(9) "Person" means a natural person, partnership, firm, association or corporation, including any agent or employee thereof residing in or doing business in this state who is engaged in the selling of, making available of or providing of "preneed funeral contracts," defined herein, or is the recipient of funds paid for such purpose.

(10) "Person who makes a preneed funeral contract available" means a person who, while not directly selling the contents of a preneed funeral contract to the public through his efforts, makes such contracts available to the public but shall not include manufacturers of funeral goods or burial goods.

(11) "Personal residence" means any residential building in which one temporarily or permanently maintains his abode including, but not limited to, hotels, motels, apartments, nursing homes, convalescent homes, homes for the aged and public and private institutions.

(12) "Preneed funeral contract" means any contract, agreement, mutual understanding, series or combination of contracts, agreements and mutual understandings, other than a contract of insurance, under which, for a specified consideration paid in advance of death in a lump sum or by installments, a person promises to furnish or make available or provide funeral services, funeral goods or burial goods for use at a time determinable by the death of the "contract beneficiary" who is either named or implied.

(13) "Provider" means a person who, though not a party to a preneed funeral contract does, through his efforts, make the services or goods referred to in such a contract available to the public pursuant to such a contract.

(14) "Trustee" means any natural person, partnership or corporation, including any bank, trust company, savings and loan association or credit union, which
receives money pursuant to any agreement or contract made pursuant to the provisions of this article.

§47-14-4. Agents and employees; licenses required; fee to go to department.

1 No agent or employee of a contract seller may sell preneed funeral contracts in this state without first obtaining from the department a license for such purpose. The fee for such license and the annual renewal thereof shall be twenty-five dollars. These fees shall be payable to the “Preneed Burial Contract Regulation Fund” established by section three of this article. The department shall not issue such license without requiring an applicant for the license, or if the applicant is a corporation, its individual agents, to provide proof to warrant its issuance by presenting with the application affidavits from his employer stating that, to the employer’s best information, knowledge and belief the applicant merits a license. The acts of the agent shall be considered acts of the employer. The department may require the applicant to pass a written examination to ascertain if the applicant has sufficient knowledge of the industry and the provisions of this article to properly carry on the business covered by this article.

§47-14-5. Disposition of proceeds; trusts; procedure for administration, department to promulgate rules and regulations.

1 (a) All sums paid or collected on such contracts entered into after the effective date of this article shall be handled in the following manner:

4 (1) The contract seller or other person collecting the funds may retain for his own use and benefits and for the purpose of covering his selling expenses, servicing costs and general overhead, an amount not to exceed ten percent of the total amount agreed to be paid by the contract buyer as reflected in the preneed funeral contract. Such ten percent or other amount is exempt from the trust and refunding provisions of this article;

12 (2) All of the funds collected under the contract, less the amount authorized to be deducted under subdivision
(1) of this subsection, shall be deposited under the provisions of subdivision (3) hereof;

(3) Unless otherwise specifically exempt under this article, all funds paid to or collected by any person from a preneed funeral contract shall, within thirty days after receipt thereof by such a person, be deposited in this state (i) in the name of a trustee who is a contract seller, provider or person making the preneed funeral contract available, in a state or federally chartered and insured bank, savings institution, building and loan institution located in this state or in a state or federally chartered credit union located in this state, or (ii) under the terms of a trust instrument entered into with a national or state bank having trust powers or a trust company located in this state.

(b) The funds to be deposited from more than one preneed funeral contract may at the option of the recipient thereof or the certificate of authority holder, be placed in a common or commingled trust fund in this state under a single trust instrument.

(c) All deposits shall be placed in an account with a trustee in the name of the contract seller, provider or person making the contract available, as set forth in the contract, to whom the contract buyer makes payment. Records shall be maintained as to each contract showing the amount paid, the amount deposited and the amount invested with respect to any particular buyer's contract.

(d) All funds required to be deposited and covered by this article shall remain in this state.

(e) All accounts of money deposited in any bank, savings institution, building and loan association or credit union in accordance with the provisions of this article are subject to periodic examination by the department of banking of this state.

(f) The department shall promulgate rules and regulations in accordance with chapter twenty-nine-a of this code for the purpose of administering the provisions of this article.
§47-14-7. Income on trust accounts.

(a) Whether the payments on a preneed funeral contract are placed in a bank, savings institution, building and loan association, credit union or in a common trust fund as permitted in this article, or are part of a commingled common trust fund as permitted in this article, the income from a contract deposit, except as otherwise provided herein, shall accrue to the individual account until such time as the burial goods, funeral goods and funeral services for the contract beneficiary are required to be delivered and returned by reason of such beneficiary's death.

(b) Upon the death of such contract beneficiary, the total amount in the trust account attributable to the contract beneficiary shall be disbursed as follows:

(1) If the cost of the goods and services contracted for at the time of such beneficiary's death exceeds the amount paid under the contract, then the provider may have and use the principal and so much of the interest as may be necessary to defray such additional cost over and above the contract cost: Provided, That to the extent that the cost of goods and services provided exceeds the principal and interest thereon, the provider shall provide and make available the goods and services contracted for at no additional cost to the contract purchaser or to the heirs or personal representative of the contract beneficiary;

(2) To the extent the principal and interest thereon exceed the cost of the goods and services contracted for, then the provider may retain only so much of the principal and interest necessary to defray the total of such cost and the balance shall be returned to the estate of the contract beneficiary or to the contract buyer as may be proper under the provisions of this article or the rules and regulations of the department.

(c) The trustee for the trust shall make annual valuations of assets held in trust. No person may withdraw income from the trust, except for the purpose of executing the terms of the contract, disbursing the trust proceeds as provided in this article and paying
§47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trusts; contracts may be irrevocable; "Preneed Guarantee Fund" established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.

(a) A contract seller, provider or person making the preneed funeral contract available may not enforce a preneed funeral contract made in violation of this article, but a contract buyer or his heirs or legal representative may recover all amounts paid under his contract and all accrued income on such amount where the contract seller, provider or person making the preneed funeral contract available has violated the provisions of this article as to such contract. The right of such recovery is in addition to the remedy provided for in section twelve of this article.

(b) A contract seller, provider or person making the preneed funeral contract available may appoint a board of at least three individual trustees under a trust instrument, if the trustee is other than a chartered state or national bank or trust company under the supervision of the department of banking of this state, to serve as trustees of its trust funds. Each individual trustee shall be a resident of this state and shall hold office subject to the direction of the seller. Not more than one member of the board of trustees of a trust fund may have a proprietary interest in the seller appointing trustees or in any certificate of authority holder who is placing funds in such trust.

Individual trustees of a trust fund established under the provisions of this article shall file a fidelity bond with a corporate surety thereon which is licensed to do business in this state with the department in an amount equal to the funds in trust, guaranteeing payment of damages occasioned by breach of the trustees' fiduciary duties. The trustees of one or more trust funds need file only one such bond. The aggregate liability of the surety
shall in no case exceed the face amount of the bond. The department or any aggrieved person claiming against any bond required by this section may maintain an action against the trustee and the surety. Individual trustees shall take no action respecting trust funds unless there is on file with the department a bond as required by this section. If the trustees are individuals, the department may suspend the certificate of authority of any contract seller, provider or person making the preneed funeral contract available having trust funds with respect to which there is no bond on file with the department as required by this section.

(c) All trustees under the terms of this article are subject to the following investment standards: In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of others, trustees have the responsibilities which customarily attach to such offices and to the type of estates entrusted to their care and 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.

(d) No preneed funeral contract may restrict any contract buyer who may make his or her contract irrevocable in accordance with the laws and regulations of this state.

(e) All preneed funeral contracts must be in writing and no contract form may be used without prior approval of the department.

(f) Each contract buyer shall pay a fee of five dollars to the contract seller, who in turn will forward such sum to the department within ten days after execution of the preneed funeral contract. The contract shall be recorded in the department. Within ten days after receiving the fee, the department will notify the contract purchaser, by mail, of the recording. The fees shall be placed by the department in an account under the department’s control entitled “Preneed Guarantee Fund,” and the
income thereon shall accrue to the fund. The department may use such income, if necessary in its discretion, to enforce this article.

In the event any buyer of any preneed funeral contract is unable to receive the benefits of his contract, or to receive the funds due by reason of his cancellation thereof, such buyer may apply to the department on a form supplied by the department. Upon the finding of the department that said benefits or return of payment is not available to the buyer, the department will cause to be paid to the said buyer from the "Preneed Guarantee Fund" the amount actually paid by the buyer under his or her contract. If the seller's liability for default is subsequently proven, any award made by a court of law shall be made payable to the "Preneed Burial Contract Regulation Fund" established in section three of this article.

(g) Notwithstanding the provisions of subsection (f), section five of this article, delivery of funeral or burial goods prior to the death of the person for whose benefit they are purchased does not constitute performance or fulfillment, either wholly or in part, of any preneed contract or series of contracts.

(h) The contract buyer may, on acceptance in writing by a transferee, transfer the obligations of the seller, provider or person making the preneed funeral contract available to other persons within or without this state. The funds on deposit for the contract on any future payments, if any, by the contract buyer shall then be transferred to and deposited under applicable state law, if any, in the state wherein the contract buyer resides or to a state where the obligations of the provider of the funeral service and goods will be fulfilled.

Upon such transfer, the contract buyer and transferee shall, in writing, release the contract seller, provider or person making the preneed funeral contract available and the trusts, as applicable, for any further liability under such contract.

Nothing in this article or in any preneed contract may limit the right of a contract buyer to assign such a contract to any person whomsoever except as specifi-
cally provided herein and except that if the assignee is
a resident of this state or the contract is to be fulfilled
by the assignee in this state, the assignee must hold a
certificate of authority under this article. If the contract
is to be fulfilled in another state, the assignee must in
all respects be in compliance with the preneed funeral
law of that state, if any.

(i) Notwithstanding any other law of this state, a
contract seller, provider or person making the preneed
funeral contract available may, if requested by the
contract buyer where the contract is to be paid in
installments, provide for the sale of credit life insurance
on the life of the contract beneficiary in order to have
the funds necessary to make payment in full under the
contract if the beneficiary should die prior to completing
all the payments due. The seller shall disclose all costs
of such insurance in clear language and shall inquire of
the buyer whether he understands the terms of the
insurance contract and is aware of the total cost of the

(j) In the event any certificate of authority holder or
anyone in violation of the article who has outstanding
preneed funeral contracts and is not the current holder
of a certificate of authority sells its business, through the
sale of assets or stock, which is involved in the fulfil-
ment of obligations under preneed funeral contracts,
the buyer of such business is a "successor in interest"
and is covered not only by this article but shall assume
the obligations of seller under seller's outstanding
preneed funeral contracts regardless of whether seller
made known to buyer the existence of such contract or
contracts.

CHAPTER 101

(Com. Sub. for S. B. 166—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed March 10, 1987; in effect from passage. Approved by the Governor.]
one thousand nine hundred thirty-one, as amended, relating to licenses to practice medicine and surgery or podiatry; examination and licensure fees; elimination of educational training permits, temporary permits and licensure by diplomate certificate from an American specialty board; additional requirements for graduate clinical training for physicians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.
§30-3-11. Endorsement of licenses to practice medicine and surgery and podiatry; fees; temporary license.
§30-3-12. Biennial renewal of license to practice medicine and surgery and podiatry; fee; inactive license.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

1 (a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.

(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of such reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of medicine and surgery;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine, which is approved
19 by the liaison committee on medical education or by the
20 board;
(3) He or she must submit evidence to the board of
21 having completed a minimum of one year of graduate
22 clinical training in a program approved by the accred-
23 itation council for graduate medical education; and
24 (4) He or she must pass an examination approved by
25 the board, which examination can be related to a
26 national standard. The examination shall be in the
27 English language and be designed to ascertain an
28 applicant's fitness to practice medicine and surgery. The
29 board shall before the date of examination determine
30 what will constitute a passing score: Provided, That the
31 said board, or a majority of them, may accept in lieu
32 of an examination of applicants, the certificate of the
33 national board of medical examiners. If an applicant
34 fails to pass the examination on two occasions, he or she
35 shall successfully complete a course of study or training,
36 as approved by the board, designed to improve his or
37 her ability to engage in the practice of medicine and
38 surgery, before being eligible for reexamination.
(c) In addition to the requirements of subsection (b)
hereof, any individual who has received the degree of
39 doctor of medicine or its equivalent from a school of
40 medicine located outside of the United States, the
41 Commonwealth of Puerto Rico and Canada, to be
42 licensed to practice medicine in this state, must also
43 meet the following additional requirements and
44 limitations:
(1) He or she must be able to demonstrate to the
45 satisfaction of the board his or her ability to commun-
46 icate in the English language;
(2) Before taking a licensure examination, he or she
47 must have fulfilled the requirements of the educational
48 commission for foreign medical graduates for certifica-
49 tion, or he or she must provide evidence of receipt of a
50 passing score on the examination of the educational
51 commission for foreign medical graduates; and
52 (3) He or she must submit evidence to the board of
53 having completed a minimum of two years of graduate
(d) For an individual to be licensed to practice podiatry in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of such reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of podiatric medicine;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of podiatric medicine and its equivalent from a school of podiatric medicine which is approved by the council of podiatry education or by the board; and

(3) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of podiatric medicine, before being eligible for reexamination.

(e) All licenses to practice medicine and surgery granted prior to July first, one thousand nine hundred eighty-seven, and valid on that date, shall continue in full effect for such term and under such conditions as provided by law at the time of the granting of the license: Provided, That the provisions of subsection (d) of this section shall not apply to any person legally entitled to practice chiropody or podiatry in this state prior to the eleventh day of June, one thousand nine hundred sixty-five: Provided, however, That all persons
licensed to practice chiropody prior to the eleventh day of June, one thousand nine hundred sixty-five, shall be permitted to use the term "chiropody-podiatry" and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

§30-3-11. Endorsement of licenses to practice medicine and surgery and podiatry; fees; temporary license.

(a) Any person seeking to be licensed to practice medicine and surgery in this state who holds a valid license to practice medicine and surgery attained under requirements substantially similar to the requirement of section ten of this article from another state, the District of Columbia, the Commonwealth of Puerto Rico or Canada, and any person seeking to be licensed to practice podiatry in this state who holds a valid license to practice podiatry attained under requirements substantially similar to the requirements in section ten of this article from another state, territory or foreign country or the District of Columbia shall be issued a license to practice medicine and surgery or podiatry, as appropriate, in this state if he or she meets the following requirements:

(1) He or she must submit an application to the board on forms provided by the board and remit a reasonable licensure fee, the amount of such reasonable fee to be set by the board. The application must, as a minimum, require a statement that the applicant is a licensed physician or podiatrist in good standing and indicate whether any medical disciplinary action has been taken against him or her in the past; and

(2) He or she must demonstrate to the satisfaction of the board that he or she has the requisite qualifications to provide the same standard of care as a physician or podiatrist initially licensed in this state.

(b) The board may investigate the applicant and may request a personal interview to review the applicant's qualifications and professional credentials.

(c) The board may, at its discretion, grant a temporary license to an individual applying for licensure under this section if the individual meets the requirements of
subdivision (1), subsection (a) of this section. Such temporary license shall only be valid until the board is able to meet and consider the endorsement request. The board may fix and collect a reasonable fee for a temporary license, the amount of such reasonable fee to be set by the board.

§30-3-12. Biennial renewal of license to practice medicine and surgery and podiatry; fee; inactive license.

(a) A license to practice medicine and surgery or podiatry in this state is valid for a term of two years and shall be renewed upon a receipt of a reasonable fee, as set by the board, and submission of an application on forms provided by the board.

(b) The board may renew, on an inactive basis, the license of a physician or podiatrist who is currently licensed to practice medicine and surgery or podiatry in, but is not actually practicing, medicine and surgery or podiatry in this state. A physician or podiatrist holding an inactive license shall not practice medicine and surgery or podiatry in this state, but he or she may convert his or her inactive license to an active one upon a request to the board that accounts for his or her period of inactivity to the satisfaction of the board. An inactive license may be obtained upon receipt of a reasonable fee, as set by the board, and submission of an application on forms provided by the board on a biennial basis.

CHAPTER 102
(Com. Sub. for H. B. 2321—By Delegate J. Martin)

[Passed February 26, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications of applicants for registration as a professional engineer; reciprocity; application; and fees
Be it enacted by the Legislature of West Virginia:

That section six, article thirteen, 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 13. ENGINEERS.

§30-13-6. Qualifications of applicants; reciprocity; applications; fees.

1 (a) To be eligible for registration as a professional engineer, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Not have been convicted of a felony in any court in this state or any federal court in this or any other state within ten years preceding the date of application for registration, which conviction remains unreversed; and not have been convicted of a felony in any court in this state or any federal court in this or any other state at any time if the offense for which he was convicted related to the practice of professional engineering, which conviction remains unreversed;

14 (4) Either (i) be a graduate of a school or college in an engineering curriculum approved by the board and have a specific record of an additional four years or more of experience in engineering work of a character satisfactory to the board indicating that the applicant is competent to practice engineering; or (ii) be a graduate of a school or college in a science curriculum approved by the board and have a specific record of an additional six years or more of experience in engineering work of a character satisfactory to the board indicating that the applicant is competent to practice engineering; or (iii) have a record of at least ten years of education and experience in engineering which in the opinion of the board is substantially equivalent to (i) or (ii) as set forth hereinabove; and

29 (5) Have passed the examination prescribed and administered by the board in accordance with the provisions of this article.

32 (b) The board may issue a certificate of registration
as a professional engineer to any person who holds an unrevoked license or a certificate of registration issued to him by any state, territory, or possession of the United States: Provided, That the applicant's qualifications are in the opinion of the board equal to or greater than the requirements of this article and the rules and regulations established by the board.

(c) Any applicant for registration under the provisions of subsection (a) or (b) of this section shall submit an application therefor at such time, in such manner, on such forms and containing such information as the board may from time to time by reasonable rule and regulation prescribe. The board shall prescribe a reasonable fee for the registration of professional engineers which shall not exceed one hundred dollars, or such other reasonable amount in excess of one hundred dollars as the board may establish by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code. Of such registration fee, the board may designate a portion thereof, not to exceed fifty percent of the total registration fee, as an application fee which shall accompany the application at the time of filing. Should the board deny the issuance of a certificate, the portion of the registration fee designated as an initial fee shall be retained by the board. Upon the issuance of a certificate, the remaining portion of the registration fee shall be paid in such form and at such times as the board shall direct. Applicants failing any portion of the examination will, upon reapplication, be required to pay the fees required by this subsection for each subsequent examination period for which he or she may appear, in the same manner as original applicants.

CHAPTER 103
(H. B. 2778—By Delegate Bradley)

[Passed March 14, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five, six, eight, nine-a and ten, article fourteen, chapter thirty of
the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section eight-a; and to amend and reenact sections two and three, article fourteen-a of said chapter, all relating to the state board of osteopathy, its members, applicants for examination, training of interns, license fees, temporary permits, resident physicians, fees for osteopathic medical corporations, biennial renewal of osteopathic assistant certification, and fee.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, eight, nine-a and ten, article fourteen, chapter thirty 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 eight-a; and that sections two and three, article fourteen-a of said chapter be amended and reenacted, all to read as follows:

Article
14A. Assistants to Osteopathic Physicians and Surgeons.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-3. Board of osteopathy.
§30-14-4. Application for examination.
§30-14-5. Examinations; certificate of license; certificate of authorization for osteopathic medical corporation; certification and establishment of standards for employment of assistants; fee.
§30-14-6. Issuance of license without examination; fee.
§30-14-8. Temporary permits.
§30-14-8a. Resident physicians.
§30-14-9a. Osteopathic medical corporations—Application for registration; fee; notice to secretary of state of issuance of certificate; action by secretary of state.
§30-14-10. Annual renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement.

§30-14-3. Board of osteopathy.

1 There shall be a board of osteopathy, known as the "West Virginia Board of Osteopathy" composed of five members. Three of the members shall be licensed osteopathic physicians and surgeons. These members shall be appointed by the governor by and with the
consent of the Senate from a list of six or more names recommended by the West Virginia Osteopathic Society, Incorporated. Each such member of the board shall have been a resident of and engaged in the practice of his profession in this state for a period of at least five years immediately preceding his appointment. The lay members of the board shall be appointed by the governor by and with the consent of the Senate.

The members of the board shall be appointed for a term of office of three years. The members of the board in office on the date this article takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified. On or before the first day of July of each year, the governor shall appoint one member to serve for a term of three years commencing on said first day of July; and any member shall be eligible for reappointment. When a vacancy in the membership of the board occurs for any cause other than the expiration of a term, the governor shall appoint a successor as a member of the board to fill the unexpired portion of the term of office of the member whose office has been vacated.

Each member of the board, excluding lay members, shall take, in addition to the oath of office provided for in article IV, section 5 of the constitution of this state, an oath that he has been engaged in the practice of his profession in this state for at least five years immediately preceding his appointment.

§30-14-4. Application for examination.

Each applicant for examination by the board, with the exception of assistants to osteopathic physicians and surgeons, as hereinafter provided, shall submit an application therefor on forms prepared and furnished by the board, accompanied by evidence verified by oath and satisfactory to the board, establishing that the applicant has satisfied the following requirements: (a) That the applicant is eighteen years of age or over; (b) that the applicant is of good moral character; (c) that the applicant has graduated from an approved osteopathic school in a state other than this state, provided that the applicant has practiced in the state of former residence for a period of time necessary to meet the requirement of this subdivision.
college; (d) that the applicant has submitted a letter of
verification from an AOA approved hospital stating that
he has been approved for an AOA approved internship
or that the applicant is currently in an AOA approved
internship, if internship has not already been completed;
and (e) that the applicant has paid to the board a fee
to be determined by the board that is seventy-five
dollars greater than the board’s cost of processing the
application.

§30-14-5. Examination; certificate of license; certificate
of authorization for osteopathic medical
corporation; certification and establishment
of standards for employment of assistants; fee.

The examination for a license to practice medicine
and surgery as an osteopathic physician and surgeon
shall be written and oral and shall cover all the essential
branches of medicine and surgery including anatomy,
physiology, chemistry, pharmacology, pathology, public
health—preventive medicine, surgery, obstetrics and
gynecology, osteopathic medicine, materia medica
principles and practice of osteopathy; and this list of
subjects may be expanded or regrouped at the discretion
of the board.

The board shall issue certificates of license to all
applicants who shall successfully pass the said exami-
nation and shall present evidence showing that they
have served an internship in a hospital approved by the
AOA for intern training. The board shall also examine
the application of any one or more osteopathic physi-
cians or surgeons for the formation of an osteopathic
medical corporation, filed pursuant to the provisions of
section nine-a 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 osteopathic medical corpo-
rations, in accordance with the provisions of sections
nine-a and nine-b of this article, to practice osteopathic
medicine and surgery through duly licensed osteopathic
physicians and surgeons.
27 The board shall have the power to certify and
28 establish standards for employment of assistants to
29 osteopathic physicians and surgeons.
30 No license shall be issued under the provisions of this
31 section until the person applying therefor shall have
32 paid to the board a fee of five dollars.

§30-14-6. Issuance of license without examination; fee.
1 The board may at its discretion issue a license without
2 examination to an applicant who has been licensed by
3 the national board of examiners for osteopathic physi-
4 cians and surgeons, and to an applicant who has been
5 licensed by examination in any country, state, territory,
6 province or the District of Columbia, provided the
7 requirements for licensure in the country, state,
8 territory, province or the District of Columbia in which
9 the applicant is licensed, are deemed by the board to
10 have been equivalent to requirements for licensure in
11 this state at the date such license was issued. The board
12 may also at its discretion issue a license without
13 examination to an osteopathic physician and surgeon
14 who is a graduate of an approved osteopathic college and
15 who has passed the examination for admission into the
16 medical corps of any of the armed services of the United
17 States or the United States public health service. But
18 no license shall be issued under the provisions of this
19 section until the person applying therefor shall have
20 paid to the board a fee of one hundred fifty dollars and
21 any other fees applicable to investigation.

§30-14-8. Temporary permits.
1 A temporary permit to practice in areas where
2 medical services are needed, as determined by the
3 board, may be granted by the board to a qualified
4 applicant eligible for licensure who applies for exami-
5 nation during the period between examinations or
6 regular meetings of the board. A temporary permit may
7 also be granted by the board to a qualified applicant
8 eligible for licensure by national boards or reciprocity
9 for a period of thirty days, in which time applicant must
10 appear before one of the board members for an inter-
11 view for permanent licensure. Such temporary permit
shall be effective until its holder has either been granted
or denied a license at the next regular meeting of the
board. Such permit shall be subject to revocation when,
in the opinion of the board, the terms and conditions
prescribed in the permit have been violated.

§30-14-8a. Resident physicians.

Any resident physician who has held a temporary
certificate in the state of West Virginia prior to the first
day of January, one thousand nine hundred eighty-
seven, is entitled to apply for and obtain a permanent
license. In lieu of any other requirement of law,
including the provisions of article three of this chapter,
the physician is entitled to apply for and obtain a
permanent license by virtue of the fact that he or she
has held a temporary certificate and has practiced in the
state of West Virginia during the period of temporary
certification.

§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to secretary of state of issuance of certificate; action by secretary of state.

When one or more osteopathic physicians or surgeons
duly licensed to practice osteopathic medicine in the
state of West Virginia wish to form an osteopathic
medical corporation, such osteopathic physician or
surgeon, or osteopathic physicians or surgeons, shall file
a written application with the board on a form pres-
cribed by the board, and shall furnish proof satisfactory
to the board that the signer or all of the signers of such
application is or are a duly licensed osteopathic
physician or surgeon or osteopathic physicians or
surgeons. A fee of one hundred dollars shall accompany
each such application, no part of which shall be
returnable.

If the board finds that the signer or all of the signers
of such application are duly licensed, the board shall
notify the secretary of state that a certificate of
authorization has been issued to the individual or
individuals signing such application.
When the secretary of state receives notification from the board that a certain individual or individuals has or have been issued a certificate of authorization, he shall attach such authorization to the corporation application and upon compliance by the corporation with chapter thirty-one of this code shall notify the incorporators that such corporation, through a duly licensed osteopathic physician or surgeon or duly licensed osteopathic physicians and surgeons, may engage in the practice of osteopathic medicine and surgery.

§30-14-10. Annual renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement.

All holders of certificates of license to practice as osteopathic physicians and surgeons in this state shall renew them biennially on or before July first, by the payment of a renewal fee of fifty-five dollars to the secretary of the board. The secretary of the board shall notify each certificate holder by mail of the necessity of renewing his certificate at least thirty days prior to July first of each year.

As a prerequisite to renewal of a certificate of license issued by the board, each holder of such a certificate shall furnish biennially to the secretary of the board satisfactory evidence of having completed thirty-two hours of educational refresher course training, of which the total amount of hours must be AOA approved, and fifty percent of the required thirty-two hours shall be category (1).

The failure to renew a certificate of license shall operate as an automatic suspension of the rights and privileges granted by its issuance.

A certificate of license suspended by a failure to make a biennial renewal thereof may be reinstated by the board upon compliance of the certificate holder with the following requirements: (a) Presentation to the board of satisfactory evidence of educational refresher training of quantity and standard approved by the board for the previous two years; (b) payment of all fees for the previous two years that would have been paid had the
ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14A-3. Fees.


1 Approval of a job description and establishment of qualifications for employment as an assistant to an osteopathic physician and surgeon must be obtained from the board of osteopathy. The board of osteopathy shall certify each qualified applicant for employment as an assistant to an osteopathic physician and surgeon upon submission of a job description, and shall provide for biennial renewal of certification. The board shall have the power to revoke or suspend any certification of an assistant to an osteopathic physician and surgeon, for cause, after having given the person an opportunity to be heard in the manner provided by sections eight and nine, article one of this chapter.

§30-14A-3. Fees.

1 Each job description submitted by a permanently licensed osteopathic physician and surgeon shall be accompanied by a fee of fifty dollars. A fee of twenty-five dollars shall be charged for each biennial renewal of certification.

CHAPTER 104
(H. B. 2048—By Delegate Flanigan)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]
amended, relating to the qualifications for licensure of nursing homes; exceptions; application; increase in license fees and fees for renewal; display of license and emergency permits.

Be it enacted by the Legislature of West Virginia:

That sections four, five and six, article twenty-five, 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 25. NURSING HOME ADMINISTRATORS.

§30-25-4. Qualifications for license; exceptions; application; fees.

(a) To be eligible for a license as a nursing home administrator a person must:

1. Be of good moral character;
2. Possess such qualifications and meet such reasonable standards as the board may prescribe pursuant to subsection (a), section seven of this article;
3. Pass the examination prescribed by the board in the subject of nursing home administration; and
4. Have sufficient knowledge and soundness of judgment to be able to adequately discharge the functions of a nursing home administrator.

(b) Any person who holds a license or certificate as a nursing home administrator issued by any other state, the requirements for which license or certificate are found by the board to be at least as great as those provided in this article may be granted a license without examination if he meets all of the other requirements for licensing in this state.

(c) Any applicant for any such license shall submit an application therefor at such time, in such manner, on such forms and containing such information as the board may, from time to time, by reasonable rules and regulations prescribe and pay to the board a license fee
of two hundred dollars, which fee shall be returned to
the applicant if he is denied a license.

§30-25-5. Issuance of license; renewal of license; renewal
fee; display of license.
Whenever the board finds that an applicant meets all
of the requirements of this article for a license as a
nursing home administrator, it shall forthwith issue to
him such license; otherwise the board shall deny the
same. The license shall be valid for a period ending on
June thirty next ensuing and may be renewed without
examination upon application for renewal on a form
prescribed by the board and payment to the board of
a renewal fee of one hundred dollars: Provided, That the
board may deny an application for renewal for any
reason which would justify the denial of the original
application for a license. The board shall prescribe the
form of licenses and each such license shall be conspic-
uously displayed by the licensee at the nursing home
which he administers.

If a licensed nursing home administrator dies or is
unable to continue as such from an unexpected cause,
the owner, governing body or other appropriate author-
ity in charge of the nursing home involved may
designate an acting administrator to whom the board
may immediately issue an emergency permit if it finds
such appointment will not endanger the safety of the
occupants of such nursing home. Such emergency
permit shall be valid for a period determined by the
board not to exceed six months and shall not be
renewed. The fee for an emergency permit shall be one
hundred dollars.

CHAPTER 105
(H. B. 2667—By Delegates Leary and Childers)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]
the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hearing-aid dealers and fitters; prohibiting state or local governmental organizations or agencies from licensure eligibility; changing the annual meeting of the board of hearing-aid dealers; increasing the per diem salary for board members; increasing the licensing fee; requiring continuing education as a prerequisite for renewal of license; clarifying matters to be ascertained by a licensee prior to the sale or fitting of hearing aids; and simplifying the information to be furnished to a person supplied with a hearing aid.

Be it enacted by the Legislature of West Virginia:

That sections two, three, seven, nine, fourteen and fifteen, article twenty-six, 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 26. HEARING-AID DEALERS AND FITTERS.

§30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.

§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

§30-26-9. Renewal of license.

§30-26-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.

§30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required; right to rescind purchase agreement.

§30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.

1 (a) Except as provided in subsections (b), (c) and (d) hereof no person shall, on or after the effective date of this article, engage in the practice of dealing in or fitting of hearing aids, either as a hearing-aid dealer, fitter or as a trainee, nor shall any person advertise or assume any such practice, without first being licensed
(b) If the applicant is a partnership, trust, association, corporation or other like organization, the application, in addition to such other information as the board may require, shall be accompanied by an application for a license for each person, whether owner or employee, of such applicant who serves in the capacity of a hearing-aid dealer or fitter, or shall contain a statement that such applications for all such persons are submitted separately. No partnership, trust, association, corporation or other like organization shall permit any unlicensed person to sell hearing aids or to engage in the practice of dealing in or fitting of hearing aids.

(c) This article is not intended to prevent any person who is not licensed under this article from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids, provided such person or organization employing such person does not sell hearing aids or accessories thereto, except in the case of earmolds to be used only for the purpose of audiologic evaluation.

State or local governmental organizations or agencies and organizations chartered as not-for-profit shall not be eligible for licensure to fit and dispense hearing aids.

§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

There is hereby created the West Virginia board of hearing-aid dealers, which shall be composed of five members to be appointed by the governor, by and with the advice and consent of the Senate. The members of the board shall be residents of this state. One member shall be a person licensed to practice medicine in this state and one member shall hold a degree in audiology from an accredited college or university. The remaining three members shall be persons having no less than five years' experience as hearing-aid dealers or fitters and shall hold a valid license under the provisions of this
The term of office of each member of the board shall be four years, excepting that as to the members first appointed to the board, one shall be appointed for two years; two shall be appointed for three years; and two shall be appointed for four years. A board member shall serve until his successor has been duly appointed and qualified and any vacancy in the office of a member shall be filled by appointment for the unexpired term of such member. Any member of the board shall be eligible for reappointment.

The board shall annually at its meeting first succeeding the first day of May elect from its own members a chairman and vice chairman.

Each member of the board shall receive for each day actually engaged in the duties of his office, a per diem salary of one hundred dollars and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of such board. All fees and other moneys collected by the board, pursuant to the provisions of this article, shall be kept in a separate fund and shall be expended solely for the purposes of this article. The compensation for the members of the board and all expenses incurred under this article shall be paid from this special fund and no such compensation or expenses shall be paid from the general revenue fund of this state. All disbursements of funds necessary to carry out the provisions of this article shall be so disbursed only upon the authority of the board.

The board is hereby empowered, with the assistance of the department to generally supervise, regulate and control the practice of dealing in or fitting of hearing aids in this state, and in so doing, shall administer qualifying examinations in accordance with the provisions of this article to test the knowledge and proficiency of all prospective licensees or trainees.
The board may purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants as provided in this article and may purchase such other equipment and supplies and employ such persons as it deems appropriate to carry out the provisions of this article.

The board shall promulgate reasonable rules and regulations in accordance with and subject to the provisions of chapter twenty-nine-a of this code:

(a) For the proper performance of its duties;

(b) To define and prescribe the ethical practice of dealing in or fitting of hearing aids for the safety, protection and welfare of the public;

(c) To govern the time, place and manner of conducting the examinations required by this article and the standard, scope and subject of such examinations, which examinations shall, as a minimum, conform with the standards, scope and subjects set forth in section six of this article and manner and form in which applications for such examinations shall be filed;

(d) To establish procedures for determining whether persons holding similar valid licenses from other states or jurisdictions shall be required to take and successfully pass the appropriate qualifying examination as a condition for such licensing in this state.

§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

(a) Any person who has taken the examination shall be notified by the board within thirty days following such examination as to whether he has satisfactorily passed the examination. If such person has failed to pass the examination, he shall be notified of the reasons for such failure and the particular portions of the examination which he failed to pass. Such person shall also be advised of his right to take the examination in the future.

If such applicant has satisfactorily passed the examination, he shall be advised of that fact by the board and,
upon payment of fifty dollars, the board shall register the applicant as a licensee and shall issue a license to such applicant. Such license shall remain in effect until the next succeeding thirtieth day of June.

(b) Within six months following the effective date of this article, any applicant for a license who has been engaged in the practice of dealing in or fitting of hearing aids in this state for a period of three years immediately prior to such effective date, shall be so registered and issued a license without being required to undergo or take the examination required by this article: Provided, That such person meets all other requirements of this article and the rules and regulations promulgated pursuant thereto. All of the fees which such prospective licensee would be otherwise required to pay shall be paid by such prospective licensee in the same manner and to the same extent as if such prospective licensee had not so engaged in such practice in this state for such three-year period.

(c) The issuance of a license by the board must have the concurrence of a majority of its members.

§30-26-9. Renewal of license.

(a) A person who is engaged in the practice of dealing in or fitting of hearing aids shall annually pay to the board a fee of forty dollars for a renewal of his license. A thirty-day period shall be allowed after expiration of a license during which any such license may be renewed on payment of a fee of forty-five dollars to the board. After the expiration of such thirty-day period, the board may renew such license upon the payment of fifty dollars to the board. No person who applies for renewal, whose license was suspended for failure to renew, shall be required to submit to any examination as a condition of renewal if application is made within two years following the date such license was so suspended.

(b) In each even numbered year beginning with the year one thousand nine hundred eighty-eight, each applicant for renewal of license shall present to the board evidence of continuing study and education of not less than twenty hours in a course of study approved by
the board. Such twenty hours of instruction must have been gained during the immediately preceding two years.

§30-26-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.

(a) Every licensee engaged in the practice of dealing in or fitting of hearing aids shall, prior to the sale or the fitting of a hearing aid intended to be worn or used by any person under eighteen years of age, first ascertain whether such person has within the next preceding six months been examined for the defective or impaired hearing condition sought to be relieved by an otolaryngologist or other duly licensed physician. If such person has been so examined, the licensee shall, prior to the sale or fitting of such hearing aid, obtain from such otolaryngologist or physician written authority to fit a hearing aid. If such person has not been so examined, the licensee shall not proceed to the sale or fitting of a hearing aid until after such person has been so examined. If the prospective user is eighteen years of age or older, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirement provided that the hearing aid dispenser:

(1) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;

(2) Does not in any way actively encourage the prospective user to waive such a medical evaluation;

(3) Affords the prospective user the opportunity to sign the following statement: I have been advised by (hearing aid dispenser's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician, preferably one who specializes in diseases of the ear, before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.

(b) Prior to the sale of a hearing aid, every licensee shall be required to advise in writing, in the manner and
form prescribed by the board, the person to whom he
intends to sell or fit with such hearing aid that such
person's best interest would be served by consulting an
otolaryngologist or other physician specializing in
diseases of the ear, or any other physician duly licensed
to practice medicine in this state, if any of the following
conditions are found upon examination of such person:

(1) Visible congenital or traumatic deformity of the
ear;

(2) History of active ear discharge within the previous
ninety days;

(3) History of a sudden or rapidly progressive hearing
loss within the previous ninety days;

(4) Acute or chronic dizziness;

(5) Unilateral hearing loss of sudden or recent onset
within the previous ninety days; or

(6) Significant air-bone gap.

(c) A copy of any writing or form required to be given
to a prospective purchaser or other person by the terms
of this section shall be retained in the records of the
licensee for a period of seven years following the
issuance of each writing.

§30-26-15. Receipt required to be furnished to a person
supplied with hearing aid; information
required; right to rescind purchase
agreement.

(a) Any person who practices the fitting and sale of
hearing aids shall deliver to each person supplied with
a hearing aid a receipt which shall contain his signa-
ture, his business address and the number of his license;
the specifications as to the make and model of the
hearing aid furnished; the full terms of the sale,
including the date upon which the hearing aid was
supplied to the person; and the following statement:
"Any person supplied with a hearing aid by a hearing-
aid dealer licensed in this state has the right to return
the hearing aid to the dealer from whom the aid was
purchased within thirty days after receipt of the aid and
rescind the purchase agreement except for reasonable
fitting and examination charges if the person is
dissatisfied with the hearing aid.” If a hearing aid which
has been previously sold at retail is sold, the receipt
shall be clearly marked as “used” or “reconditioned,”
whichever is applicable, with terms of guarantee, if any.

Such receipt shall be in the manner and form as
prescribed by the board in its rules and regulations.
Such rules and regulations shall prescribe the type and
size of print to be used in such receipt and the receipt
shall set forth such additional information as the board
may prescribe. A copy of such receipt shall be retained
in the records of the licensee for a period of seven years
following the issuance of such receipt.

(b) Each person supplied with a hearing aid by a
hearing-aid dealer licensed pursuant to the provisions of
this article shall have the right to return the hearing
aid to the dealer within thirty calendar days of receipt
and rescind the purchase agreement if the hearing aid
does not function properly, cannot be adjusted to
satisfactorily correct the deficiency in the person’s
hearing or the person is otherwise dissatisfied with the
hearing aid. If a hearing-aid dealer, pursuant to being
notified by a person to whom he has supplied a hearing
aid that the hearing aid does not function properly, does
not satisfactorily correct the deficiency in the person’s
hearing or that the person is otherwise dissatisfied with
the hearing aid, makes an adjustment to the hearing aid
or advises the person to continue use of the hearing aid
for the purpose of becoming more accustomed thereto
or any other reason, the right of the person to whom the
hearing aid was supplied shall be extended for thirty
calendar days following the date upon which such
adjustment was made or advisement was given.

(c) An exercise of the right to rescind the purchase
agreement by a person to whom a hearing aid has been
supplied may not preclude the dealer from charging
reasonable fees for examination and fitting. The
maximum fees which may be charged by a hearing-aid
dealer for examination and fitting shall be fixed by the
West Virginia board of hearing-aid dealers by rule and
regulation lawfully promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

CHAPTER 106

(S. B. 323—By Senators Tonkovich, Mr. President, Jones and Chernenko)

[Passed March 10, 1987; 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 twenty-nine-a, relating to standards for professional fire fighters training; definitions; original appointment; professional fire fighters certification board; duties of board; certification requirements; review of certification; and compliance.

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 twenty-nine-a, to read as follows:

ARTICLE 29A. STANDARDS FOR PROFESSIONAL FIRE FIGHTERS TRAINING; REGISTERED APPRENTICESHIP AND CERTIFICATION.

§30-29A-1. Definitions.
§30-29A-2. Original appointments.
§30-29A-3. Professional fire fighters certification board.
§30-29A-4. Duties of the professional fire fighters certification board.
§30-29A-5. Certification requirements.
§30-29A-6. Review of certification.
§30-29A-7. Compliance.

§30-29A-1. Definitions.

1 For the purposes of this article, unless a different meaning clearly appears in the context:

3 "Bureau of apprenticeship and training" means the bureau of apprenticeship and training of the United States Department of Labor;
"Certificate of certification" means a certificate issued by the bureau of apprenticeship and training stating that a person has complied with the standards set forth in this article;

"Local training board" means the board of the local paid fire department required to be established by the standards set forth in section two of this article;

"Municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

"Paid fire department" means those paid fire departments established under the provisions of section nine, article fifteen, chapter eight of this code;

"Professional fire fighter" means those persons who are employed by a municipality in the state that has a paid fire department;

"State" means the state of West Virginia;

"State board" means the professional fire fighters certification board as established in section three of this article;

"West Virginia professional fire chiefs association" means the association representing paid fire chiefs in the state of West Virginia; and

"West Virginia professional fire fighters association" means the association representing paid fire fighters in the state of West Virginia.

§30-29A-2. Original appointments.

Original appointments to paid fire departments shall enroll and complete the requirements as registered with the bureau of apprenticeship and training of the United States Department of Labor.

On and after the effective date of this article, all original appointments in a paid fire department subject to the civil service provisions of section sixteen, article fifteen, chapter eight of this code, shall enroll and complete the requirements as registered with the bureau of apprenticeship and training of the United
§30-29A-3. Professional fire fighters certification board.

(a) A professional fire fighters certification board is hereby created and assigned responsibility for review of programs and standards, for training of apprenticeship and certification of professional fire fighters in the state. The state board shall be comprised of five members including two representatives appointed by each of the following: The West Virginia professional fire fighters association; the West Virginia professional fire chiefs association; and one representative from the bureau of apprenticeship and training of the United States Department of Labor.

(b) The state board shall elect a chairperson. Meetings may be held upon the call of the chairperson. A majority of the members of the state board constitutes a quorum.

§30-29A-4. Duties of the professional fire fighters certification board.

The professional fire fighters certification board shall, by or pursuant to rule or regulation:

(a) Establish standards governing the quality of training of paid fire departments in the state pursuant to section two of this article.

(b) Establish the level of skill required for certification.

(c) Promulgate rules and procedures for the local training board to follow in securing certification of a paid fire fighter by the bureau of apprenticeship and training of the United States Department of Labor.

(d) Certify the paid fire fighter as provided in section five of this article and request a certificate of certification from the bureau of apprenticeship and training of the United States Department of Labor to the person that has qualified.

§30-29A-5. Certification requirements.

Standards for certification must meet or exceed those
of the National Fire Protection Association Standards No. 1001 as amended and updated from year to year.

§30-29A-6. Review of certification.

Certification of each person certified as provided in section four of this article shall be reviewed annually, by the state board, in order to update that person's knowledge of new or improved procedures in this profession.

§30-29A-7. Compliance.

The state board shall ensure employer and employee compliance with this article. The chief of the paid fire department and the local training board shall see and assure compliance with all established criteria. The individuals mentioned in this section, and in section three of this article, shall be in full sympathy with the purposes of the training and apprenticeship and certification provisions of this article.

CHAPTER 107
(H. B. 2805—By Delegate Seacrist)

[Passed March 14, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees eligible for optional lump-sum payment at termination of employment for unused annual leave; requiring that no employee contribution deduction occur because no retirement service credit awardable; and providing for refund to former employee in the event such contribution was mistakenly withheld.

Be it enacted by the Legislature of West Virginia:

That section three, 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; LUMP SUM PAYMENTS FOR ANNUAL LEAVE AT RETIREMENT.

§5-5-3. Optional payment to employee in lump sum amount for accrued and unused annual leave at termination of employment; no withholding of any employee contribution deduction.

Every eligible employee, as defined in section one of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employee’s usual rate of pay at such time. The lump sum payment shall be made by the time of what would have been the employee’s next regular payday had his employment continued. In determining the amount of annual leave entitlement, weekends, holidays or other periods of normal, noncountable time shall be excluded, and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued annual leave, since no period of service credit is granted in relation thereto, and where any such deduction of employee contribution may have been heretofore made, a refund of such shall be granted the former employee and made by the head of the respective former employer spending unit.

CHAPTER 108
(H. B. 2235—By Delegate Murphy)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating to authorizing the state treasurer to make direct deposits of salaries of state employees to accounts at banks or other financial institutions designated by the employees.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-1b. Voluntary direct deposits by treasurer of salaries of employees to banks or other financial institutions.

Any officer or employee of the state of West Virginia may authorize that his net wages be deposited directly to his account in any bank or other financial institution within this state. The direct deposits may be authorized on a form provided by the treasurer. Upon execution of such authorization and its receipt by the office of the treasurer, the direct deposits shall be made in the manner specified on the form and remitted to the designated bank or other financial institution on or before the day or days the officer or employee is due his net wages. Direct deposit authorizations may be revoked at any time thirty days prior to the date on which the direct deposit is regularly made and on a form to be provided by the office of the treasurer.

CHAPTER 109

(S. B. 706—By Senators Tomblin and Jackson)

[Passed March 14, 1987; in effect July 1, 1987. 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 the department of public safety; creating the salaried positions of first lieutenant and second lieutenant and increasing the salaries of certain members of the department.
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:

Any lieutenant colonel shall receive an annual salary of thirty-three thousand six hundred seventy-two dollars; any major shall receive an annual salary of thirty-one thousand fifty-six dollars; any captain shall receive an annual salary of twenty-eight thousand nine hundred forty-four dollars; any first lieutenant shall receive an annual salary of twenty-seven thousand three hundred seventy-two dollars; any second 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 provi-
sions 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. Accord-
ingly, 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.
AN ACT to amend and reenact section forty, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the commission on drunk driving prevention; and adding a representative of the governor.

Be it enacted by the Legislature of West Virginia:

That section forty, 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.

§15-2-40. Commission on drunk driving prevention created; members; quorum; meetings.

There is hereby created within the department of public safety the commission on drunk driving prevention which shall consist of eight members as follows: The superintendent of the department of public safety; the commissioner of the department of motor vehicles; the alcohol beverage control commissioner; the governor's representative for highway safety; a prosecuting attorney appointed by the governor from a list of three prosecuting attorneys submitted by the prosecuting attorney's association; a county sheriff appointed by the governor from a list of three county sheriffs submitted by the county sheriff's association; a municipal police officer appointed by the governor from a list of three officers submitted by the state fraternal order of police; a lay citizen of the state appointed by the governor, who has demonstrated an interest in the prevention of drunk driving.

The superintendent of the department of public safety shall be the chairman, ex officio, of the commission and shall provide the necessary staff and meeting facilities
to the commission. The appointed members shall serve for a term of two years and may be reappointed. Any appointed member who ceases to occupy the position which qualified him for the appointment shall immediately vacate his membership on the commission. Each member shall serve until the appointment of his successor.

No member shall receive any compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties.

A majority of the members of the commission shall constitute a quorum for the transaction of business. Meetings shall be held at the call of the chairman or of a majority of its members.

CHAPTER 111

(Com. Sub. for H. B. 2684—By Mr. Speaker, Mr. Chambers, and Delegate Pritt)

[Passed March 12, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article one, chapter twenty-four-a 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, all relating to the powers and duties of the public service commission generally; authorizing such commission to prescribe and enforce safety rules and regulations pertaining to the operation of heavy motor vehicles by private commercial carriers of both hazardous and conventional cargo over the state's interstate highways.

Be it enacted by the Legislature of West Virginia:

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

1. Purposes, Definitions and Exemptions.

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.


1. It is hereby declared to be the purpose and policy of the Legislature in enacting this chapter to confer upon the public service commission of West Virginia, in addition to all other powers conferred and duties imposed upon it by law, the power, authority and duty to supervise and regulate the transportation of persons and property for hire by motor vehicles upon or over the public highways of this state so as to: (a) Protect the safety and welfare of the traveling and shipping public in their use of transportation agencies by motor vehicle; (b) preserve, foster and regulate transportation and permit the coordination of transportation facilities; (c) provide the traveling and shipping public transportation agencies rendering stabilized service at just and reasonable rates. This chapter shall apply to persons and motor vehicles engaged in interstate commerce and to private commercial carriers by motor vehicle as defined in section two of this article, to the extent permitted by the constitution and laws of the United States.


1. When used in this chapter: (a) The term “motor vehicle” means, and includes, any automobile, truck, tractor, truck-tractor, trailer, semitrailer, motorbus, taxicab, any self-propelling motor-driven motor vehicle or any combination thereof, used upon any public highway in this state for the purpose of transporting persons or property; (b) the term “public highway” means any public street, alley, road or highway, or thoroughfare of any kind in this state used by the public; (c) the term “commission” means the public service commission of West Virginia; (d) the term “person” means and includes any individual, firm, copartnership, corporation, company, association or joint-stock association, and includes any trustee, receiver, assignee or
personal representative thereof; (e) the term "common
carrier by motor vehicle" means any person who
undertakes, whether directly or by lease or any other
arrangement, to transport passengers or property, or
any class or classes of property, for the general public
over the highways of this state by motor vehicles for
hire, whether over regular or irregular routes, including
such motor vehicle operations of carriers by rail, water
or air and of express or forwarding agencies, and leased
or rented motor vehicles, with or without drivers; (f) the
term "contract carrier by motor vehicle" means any
person not included in subdivision (e) of this section, who
under special and individual contracts or agreements,
and whether directly or by lease or any other arrange-
ment, transports passengers or property over the
highways in this state by motor vehicles for hire; (g) the
term "motor carrier" includes both a common carrier by
motor vehicle and a contract carrier by motor vehicle;
(h) the term "exempt carrier" means any person
operating a motor vehicle exempt from the provisions
of this chapter under section three thereof; (i) the term
"power unit" means any vehicle which contains within
itself the engine, motor or other source of power by
which said vehicle is propelled; (j) the letters "I.C.C."
mean the interstate commerce commission; (k) the
words "driveaway operation" mean an operation in
which any vehicle or vehicles, operated singly or in
lawful combinations, new or used, not owned by the
transporting motor carrier, constitute the commodity
being transported; (l) the letters "NARUC" mean the
national association of regulatory utility commissioners;
(m) the term "operations within the borders of this state"
means interstate or foreign operations to, from, within
or traversing this state; (n) the term "private commer-
cial carrier" means and includes any person who
undertakes, whether directly or by lease or other
arrangement, to transport property, including hazard-
ous materials as defined in rules and regulations
promulgated by the commission, for himself over the
interstate highways of this state, in interstate or
intrastate commerce, for any commercial purpose, by
truck tractor, semitrailer or full trailer, as hereinbelow
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57 defined: Provided, That this term shall not include
58 carriers of heavy equipment, used in excavation or
59 construction, by low-bed trailers, to or from construction
60 sites; (o) the term "truck tractor" means a self-propelled
61 motor vehicle designed and used primarily for drawing
62 other vehicles and not so constructed as to carry a load
63 other than a part of the weight of the vehicle and load
64 so drawn; (p) the term "semitrailer" means any motor
65 vehicle other than a "pole trailer," with or without
66 motive power, designed to be drawn by another motor
67 vehicle and so constructed that some part of its weight
68 rests upon the towing vehicle; (q) the term "full trailer"
69 means any motor vehicle, with or without motive power,
70 other than a "pole trailer," designed to be drawn by
71 another motor vehicle and so constructed that no part
72 of its weight except the towing device rests upon the
73 towing vehicle. A semitrailer equipped with an auxil-
74 iary front axle (dolly) shall be deemed to be a "full
75 trailer."

ARTICLE 4. PRIVATE COMMERCIAL CARRIERS OF PROPERTY
BY MOTOR VEHICLE.

§24A-4-1. Vehicular and operational safety.
1 Every private commercial carrier, as defined in
2 section two (n), article one of this chapter, shall
3 establish, maintain and operate its motor vehicles in a
4 safe manner and condition as prescribed by the safety
5 rules and regulations promulgated by the commission
6 under subsection (j), section five, article five of this
7 chapter.

CHAPTER 112
(H. B. 2399—By Delegate Love)

[Passed March 13, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four,
six, seven and eight, article twenty-a, chapter nineteen
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, all relating to vaccination of
dogs and cats for rabies; purpose and policy; vaccination record and report; vaccination tag and certificate; offenses and penalties; enforcement of article; vaccinated dogs and cats may run at large; and confinement may be required.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, six, seven and eight, article twenty-a, 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 20A. VACCINATION OF DOGS AND CATS FOR RABIES.

§19-20A-1. Purpose and policy.
§19-20A-4. Vaccination tag and certificate.
§19-20A-6. Offenses and penalties.
§19-20A-8. Vaccinated dogs and cats may run at large; confinement may be required.

§19-20A-1. Purpose and policy.
1 The purpose of this article is to establish a rabies vaccination procedure for dogs and cats and to check the spread of rabies for the immediate preservation of life, health and safety for the reason that rabies is spreading among dogs and cats, and becoming a menace and danger to people, livestock, poultry and game, and the provisions herein are designated to prevent the spread of rabies.

1 Whoever owns, keeps or harbors a dog or cat within the boundaries of any county in the state of West Virginia shall, on or before the first day of June, one thousand nine hundred eighty-seven, have such dog or cat properly vaccinated or immunized against rabies with a vaccine capable of producing immunity for two years and shall every second year thereafter have such dog or cat revaccinated with a vaccine capable of producing immunity for two years. After the first day of June, one thousand nine hundred eighty-seven, whoever obtains an unvaccinated dog or cat shall at once
have such dog or cat properly vaccinated against rabies
with a vaccine capable of producing immunity for two
years and shall have such vaccination repeated every
second year with a vaccine capable of producing
immunity for two years: Provided, That dogs and cats
need not be vaccinated before the age of three months,
but must be vaccinated by the age of six months:
Provided, however, That dogs and cats entering the state
of West Virginia temporarily cannot be kept and
maintained within the state of West Virginia for a
period of more than thirty days unless properly vacci-
nated. Anyone owning a dog or cat can have them
vaccinated by any veterinarian or person working with
or under such veterinarian, or if there be no resident
veterinarian in the county, by such other qualified
person as may be appointed by the county commission,
who shall work under the supervision of the county
health department.


Whoever vaccinates or revaccinates a dog or cat
against rabies shall keep a record of such vaccination
or revaccination, and on or before the first day of each
calendar month thereafter, shall mail to or deliver to the
county clerk of the county where the vaccination takes
place a report of such vaccination or revaccination
which shall include a number identifying the individual
record of the dog or cat vaccinated, a complete descrip-
tion of the dog or cat, place where the dog or cat is kept
or harbored, name of the owner, keeper or harborer, his
or her address, date and type of vaccination or revac-
cination and such other information as may be required
by the county health department or the county commis-
sion over the signature of the person reporting.

§19-20A-4. Vaccination tag and certificate.

There shall be provided by the state department of
agriculture uniform certificates to be approved by the
commissioner of agriculture, and which shall be
furnished to each county so that the veterinarian or
doctor of medicine, or the person vaccinating each
animal can make his proper reports, and he shall retain
one for himself, give a certificate to the owner for whom he does the work, and file one copy with the clerk of the county commission. Tags to be furnished by the county commission shall be of a distinctive and easily recognized color, and shall have thereon engraved, or stamped, the year of vaccination and the number indicating the record above described. Such tag shall be securely fastened to the collar worn by the dog and shall be given to the owner by the veterinarian, the doctor of medicine or the person vaccinating the dog or cat at the time of vaccination.

§19-20A-6. Offenses and penalties.

Whoever owns, keeps or harbors a dog or cat and fails to have such dog or cat vaccinated or revaccinated against rabies, and whoever vaccinates a dog or cat against rabies and fails or refuses to keep and report the required record of such vaccination, or fails or refuses to provide the required tag, or whoever obstructs or interferes in any way with the enforcement of any section of this article shall, upon conviction, be fined not less than ten dollars nor more than fifty dollars, or be confined in the county jail not less than ten days nor more than sixty days, or both.


The enforcement of the provisions of this article shall be in the hands of the sheriff of each county, any of his deputies, constables, conservation commission officers, commonly known as game wardens, and, if deemed necessary, there shall be a special officer to be appointed by the county commission, who is authorized, empowered, and directed to inspect rabies, pick up dogs and cats and dispose of dogs which are not taxable or not vaccinated according to this article. The sheriff of each county can have one or more sittings, if deemed necessary, in each district of the county, at which he shall be present or have present one of his deputies or the special officer above provided for, to take charge of all delinquent dogs and cats and homeless dogs and cats that are not vaccinated. The assessor of each county, or one of his deputies, shall accompany the veterinarian,
17 doctor, or the one who administers the vaccine in these
18 sittings for the purpose of collecting taxes on dogs. All
19 dogs which are not vaccinated and for which taxes are
20 unpaid shall become the responsibility of the sheriff to
21 catch and dispose of as is provided by law.

§19-20A-8. Vaccinated dogs and cats may run at large; confinement may be required.
1 Dogs or cats vaccinated in compliance with the provisions of this article may run at large in any area
2 or locality, subject to any quarantine established by the commissioner of agriculture pursuant to article nine of
3 this chapter, but the commissioner may, in his discretion, require all such vaccinated dogs and cats, as well
4 as dogs and cats not vaccinated, within the limits of any
5 such quarantined area or locality to be confined as provided in said article nine.

CHAPTER 113

(Com. Sub. for S. B. 226—By Senators Sharpe, Palumbo and Shaw)

[Passed March 12, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and ten, article one-h, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enacting the Appalachian States Low-Level Radioactive Waste Compact and amending same; and fiscal implementation.

Be it enacted by the Legislature of West Virginia:

That sections one and ten, article one-h, 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 1H. APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT.

§29-1H-1. Appalachian states low-level radioactive waste compact approved.
§29-1H-10. Fiscal implementation.
§29-1H-1. Appalachian states low-level radioactive waste compact approved.

The following Appalachian States Low-Level Radioactive Waste Compact, which has been negotiated by representatives of the Commonwealth of Pennsylvania, and the states of West Virginia, Delaware and Maryland, is hereby approved, ratified, adopted, enacted into law, and entered into by the state of West Virginia as a party state thereto, namely:

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT

Preamble

WHEREAS, The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act (42 U.S.C. Sections 2021b-2021d) has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste; and

WHEREAS, Under section 4 (a) (1) (A) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. Sections 2021 (a) (1) (A)), each state is responsible for providing for the capacity for disposal of low-level radioactive waste generated within its borders; and

WHEREAS, To promote the health, safety and welfare of residents within the Commonwealth of Pennsylvania and the states of West Virginia, Delaware and Maryland, the aforementioned states wish to enter into a compact for the regional management of low-level radioactive waste;

Now, therefore, the Commonwealth of Pennsylvania and the states of West Virginia, Delaware and Maryland hereby agree to enter into the Appalachian States Low-Level Radioactive Waste Compact.

Article 1
Definitions

As used in this Compact, unless the context clearly indicates otherwise:

(a) "Broker" means any intermediate person who
handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste obtained from a generator.

(b) "Carrier" means a person who transports low-level waste to a regional facility.

(c) "Commission" means the Appalachian States Low-Level Radioactive Waste Commission.

(d) "Disposal" means the isolation of low-level waste from the biosphere.

(e) "Facility" means any real or personal property, within the region, and improvements thereof or thereon, and any and all plant, structures, machinery and equipment, acquired, constructed, operated or maintained for the management or disposal of low-level waste.

(f) "Generate" means to produce low-level waste requiring disposal.

(g) "Generator" means a person whose activity results in the production of low-level waste requiring disposal.

(h) "Hazardous life" means the time required for radioactive materials to decay to safe levels, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by federal law or by standards to be set by a host state, whichever is more restrictive.

(i) "Host state" means Pennsylvania or any other party state so designated by the Commission in accordance with Article 3 of this Compact.

(j) "Institutional control period" means the time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency.

(k) "Low-level waste" means radioactive waste that:

(1) Is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in Section 11 (e)(2) of the Atomic Energy Act of 1954, as amended; and
(2) Is classified by the federal government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the federal government, as defined in Public Law 96-573, or federal research and development activities.

(l) "Management" means the reduction, collection, consolidation, storage, packaging or treatment of low-level waste.

(m) "Operator" means a person who operates a regional facility.

(n) "Party state" means any state that has become a party in accordance with Article 5 of this Compact.

(o) "Person" means an individual, corporation, partnership or other legal entity, whether public or private.

(p) "Region" means the combined geographical area within the boundaries of the party states.

(q) "Regional facility" means a facility within any party state which has been approved by the Commission for the disposal of low-level waste.

(r) "Shallow-land burial" means the disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered structures or by proper packaging in containers as determined by the law of the host state.

(s) "Transuranic waste" means low-level waste containing radionuclides with an atomic number greater than 92 which are excluded from shallow-land burial by the federal government.

Article 2

The Commission

(A) Creation and Organization.

(1) Creation — There is hereby created the Appalachian States Low-Level Radioactive Waste Commission. The Commission is hereby created as a body corporate
110 and politic, with succession for the duration of this
111 Compact, as an agency and instrumentality of the
112 governments of the respective signatory parties, but
113 separate and distinct from the respective signatory
114 party states. The Commission shall have central offices
115 located in Pennsylvania.

116 (2) Commission Membership — The Commission shall
117 consist of two voting members from each party state to
118 be appointed according to the laws of each party state,
119 and two additional voting members from each host state
120 to be appointed according to the laws of each host state.
121 Upon selection of the site of the regional facility, an
122 additional voting member shall be appointed to the
123 Commission who shall be a resident of the county or
124 municipality where the facility is to be located. The
125 appointing authority of each party state shall notify the
126 Commission in writing of the identities of the members
127 and of any alternates. An alternate may vote and act in
128 the member's absence. No member shall have a finan-
129 cial interest in any industry which generates low-level
130 radioactive waste, any low-level radioactive waste
131 regional facility or any related industry for the duration
132 of the member's term. No more than one half the
133 members and alternates from any party state shall have
134 been employed by or be employed by a low-level waste
135 generator or related industry upon appointment to or
136 during their tenure of office: Provided, That no member
137 shall have been employed by or be employed by a
138 regional facility operator. No member or alternate from
139 any party state shall accept employment from any
140 regional facility operator or brokers for at least three
141 years after leaving office.

142 (3) Compensation — Members of the Commission and
143 alternates shall serve without compensation from the
144 Commission but may be reimbursed for necessary
145 expenses incurred in and incident to the performance of
146 their duties.

147 (4) Voting Power — Each Commission member is
148 entitled to one vote. Unless otherwise provided in this
149 Compact, affirmative votes by a majority of a host state's
150 members are necessary for the Commission to take any
action related to the regional facility and the disposal and management of low-level waste within that host state.

(5) Organization and Procedure.

(a) The Commission shall provide for its own organization and procedures, and shall adopt bylaws not inconsistent with this Compact and any rules and regulations necessary to implement this Compact. It shall meet at least once a year in the county selected to host a regional facility and shall elect a chairman and vice chairman from among its members. In the absence of the chairman, the vice chairman shall serve.

(b) All meetings of the Commission shall be open to the public with at least fourteen days advance notice, except that the chairman may convene an emergency meeting with less advance notice. Each municipality and county selected to host a regional facility shall be specifically notified in advance of all Commission meetings. All meetings of the Commission shall be conducted in a manner that substantially conforms to the federal Administrative Procedure Act. The Commission may, by a two-thirds vote, including approval of a majority of each host state's Commission members, hold an Executive Session closed to the public for the purpose of: Considering or discussing legally privileged or proprietary information; to consider dismissal, disciplining of, or hearing complaints or charges brought against an employee or other public agent unless such person requests such public hearing; or to consult with its attorney regarding information or strategy in connection with specific litigation. The reason for the Executive Session must be announced at least fourteen days prior to the Executive Session except that the chairman may convene an emergency meeting with less advance notice in which case the reason for the Executive Session must be announced at the open meeting immediately subsequent to the Executive Session. All action taken in violation of this open meeting provision shall be null and void.

(c) Detailed written minutes shall be kept of all
meetings of the Commission. All decisions, files, records
and data of the Commission except for information
privileged against introduction in judicial proceedings,
personnel records, and minutes of a properly convened
Executive Session shall be open to public inspection
subject to a procedure that substantially conforms to the
Freedom of Information Act (Public Law 89-554, 5
U.S.C. 552) and applicable West Virginia law, and may
be copied upon request and payment of fees which shall
be no higher than necessary to recover copying costs.

(d) The Commission shall select an appropriate staff,
including an executive director, to carry out the duties
and functions assigned by the Commission.
Notwithstanding any other provision of law the Commis-
sion may hire and/or retain its own legal counsel.

(e) Any person aggrieved by a final decision of the
Commission which adversely affects the legal rights,
duties or privileges of such person, may petition a court
of competent jurisdiction, within sixty days after the
Commission’s final decision, to obtain judicial review of
said final decisions.

(f) Liabilities of the Commission shall not be deemed
liabilities of the party states. Members of the Commis-
sion shall not be personally liable for actions taken in
their official capacity.

(B) Powers and Duties.

(1) The Commission:

(a) Shall conduct research and establish regulations to
promote a reasonable reduction of volume and curie
content of low-level wastes generated in the region. The
regulations shall be reviewed and, if necessary, revised
by the Commission at least annually.

(b) Shall ensure, to the extent authorized by federal
law, that low-level wastes are safely disposed of within
the region, except that the Commission shall have no
power or authority to license, regulate or otherwise
develop a regional facility, such powers and authority
being reserved for the host state(s) as permitted under
the law.
(c) Shall designate as “host states” any party state which generates twenty-five percent or more of Pennsylvania's volume or total curie content of low-level waste generated based on a comparison of averages over three successive years, as determined by the Commission. This determination shall be based on volume or total curie content, whichever is greater.

(d) Shall ensure, to the extent authorized by federal law, that low-level waste packages brought into the regional facility for disposal conform to applicable state and federal regulations. Low-level waste brokers or generators who violate these regulations will be subject to a fine or other penalty imposed by the Commission, including restricted access to a regional facility. The Commission may impose such fines and/or penalties in addition to any other penalty levied by the party states pursuant to Article 4(D).

(e) Shall establish such advisory committees as it deems necessary for the purpose of advising the Commission on matters pertaining to the management and disposal of low-level waste.

(f) May contract to accomplish its duties and effectuate its powers subject to projected available resources. No contract made by the Commission shall bind a party state.

(g) Shall prepare contingency plans for management and disposal of low-level waste in the event any regional facility should be closed or otherwise unavailable.

(h) Shall examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge, and may make recommendations to the host state(s) which shall review the recommendations in accordance with its (their) own sovereign laws.

(i) Shall have the power to sue and be sued subject to Article 2 (A) (5) (e) and may seek to intervene in any administrative or judicial proceeding.

(j) Shall assemble and make available to the party states and to the public, information concerning low-
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level waste management and disposal needs, technologies and problems.

(k) Shall keep current and annual inventories of all generators by name and quantity of low-level waste generated within the region, based upon information provided by the party states. Inventory information shall include both volume in cubic feet and total curie content of the low-level waste and all available information on chemical composition and toxicity of such wastes.

(l) Shall keep an inventory of all regional facilities and specialized facilities, including, but not necessarily restricted to, information on their size, capacity, and location, as well as specific wastes capable of being managed, and the projected useful life of each regional facility.

(m) Shall make and publish an annual report to the governors of the signatory party states and to the public detailing its programs, operations and finances, including copies of the annual budget and the independent audit required by this Compact.

(n) Notwithstanding any other provision of this Compact to the contrary, may, with the unanimous approval of the Commission members of the host state(s), enter into temporary agreements with nonparty states or other regional boards for the emergency disposal of low-level waste at the regional facility, if so authorized by law(s) of the host state(s), or other disposal facilities located in states that are not parties to this agreement.

(o) Shall promulgate regulations, pursuant to host state law, to specifically govern and define exactly what would constitute an emergency situation and exactly what restrictions and limitations would be placed on temporary agreements.

(p) Shall not accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source, except from any federal agency and from party states which are certified as being legal and proper under the laws of the donating party state.
(C) Budget and Operation.

(1) The Commission shall establish a fiscal year which conforms to the fiscal year of the Commonwealth of Pennsylvania.

(2) Upon legislative enactment of this Compact by two party states and each year until the regional facility becomes available, the Commission shall adopt a current expense budget for its fiscal year. The budget shall include the Commission's estimated expenses for administration. Such expenses shall be allocated to the party states according to the following formula:

Each designated initial host state will be allocated costs equal to twice the costs of the other party states, but such costs will not exceed two hundred thousand dollars.

Each remaining party state will be allocated a cost of one half the cost of the initial host state, but such costs will not exceed one hundred thousand dollars.

The party states will include the amounts allocated above in their respective budgets, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the Commission in quarterly installments during the fiscal year.

(3) For continued funding of its activities, the Commission shall submit an annual budget request to each party state for funding, based upon the percentage of the region's waste generated in each state in the region, as reported in the latest available annual inventory required under Article 2 (B) (1) (k). The percentage of waste shall be based on volume of waste or total curie content as determined by the Commission.

(4) The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

(5) Annual Independent Audit.

(a) As soon as practicable after the closing of the fiscal year, an audit shall be made of the financial accounts
of the Commission. The audit shall be made by qualified certified public accountants selected by the Commission, who have no personal direct or indirect interest in the financial affairs of the Commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the Commission shall direct. Copies of the report shall be distributed to each Commission member and shall be made available for public distribution.

(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files and accounts and all other papers, things or property of the Commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the Commission and necessary to facilitate the audit; and, they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.

Article 3
Rights, Responsibilities and Obligations of Party States

(A) There shall be regional facilities sufficient to dispose of the low-level waste generated within the region. Each regional facility shall be capable of disposing of such low-level waste but in the form(s) required by regulations or license conditions. Specialized facilities for particular types of low-level waste management reduction or treatment may not be developed in any party state unless they are in accordance with the laws and regulations of such state and applicable federal laws and regulations.

(B) Each party state shall have equal access as other party states to regional facilities located within the region and accepting low-level waste: Provided, That the host state may close the regional facility located within its borders when necessary for public health and safety.
However, a host state shall send notification to the Commission in writing within three (3) days of its action, and shall, within thirty (30) working days, provide in writing the reasons for the closing.

(C) Pennsylvania and party states which generated twenty-five percent or more of the volume or curies of low-level waste generated by Pennsylvania based on a comparison of averages over the three years, one thousand nine hundred eighty-two through one thousand nine hundred eighty-four, are designated as "initial host states" and are required to develop and host low-level waste sites as regional facilities. The percentage of waste from each state shall be determined by cubic foot volume or total curie content, whichever is greater.

(D) Party states which generated less than twenty-five percent of the volume or curies of low-level waste generated by Pennsylvania based on a comparison of averages over the years one thousand nine hundred eighty-two through one thousand nine hundred eighty-four shall be exempt from initial host state responsibilities. These states shall continue to be exempt as long as they generate less than the twenty-five percent threshold over successive three-year periods. Once a state generates an average of twenty-five percent or more of the volume or curies generated by Pennsylvania over a successive three-year period, it shall be designated as a "host state" for a thirty-year period by the Commission and shall immediately initiate development of a regional facility to be operational within five years. Such host state shall be prepared to accept at its regional facility low-level waste at least equal to that generated in the state. With Commission approval, any party state may volunteer to host a regional facility. The percentage of waste from each state shall be determined by either a cubic foot volume or total curie content, whichever is greater.

(E) Pennsylvania and other host states are obligated to develop regional facilities for the duration of this Compact. All regional facilities shall be designed for at least a thirty-year useful life. At the end of the facility's life, normal closure and maintenance procedures shall
be initiated in accordance with the applicable require-
ments of the host state and the federal government.

Each host state's obligation for operating regional
facilities shall remain as long as the state continues to
produce over a three-year period twenty-five percent or
more of the volume or curies of low-level waste gener-
ated by Pennsylvania.

(F) Each host state shall:

(1) Cause a regional facility to be sited and developed
on a timely basis.

(2) Ensure by law, consistent with applicable state and
federal law, the protection and preservation of public
health, safety and environmental quality in the siting,
design, development, licensure or other regulation,
operation, closure, decommissioning long-term care and
the institutional control period of the regional facility
within the state. To the extent authorized by federal
law, a host state may adopt more stringent laws, rules
or regulations than required by federal law.

(3) Ensure and maintain a manifest system which
documents all waste-related activities of generators,
brokers, carriers and related activities of generators,
brokers, carriers and operators, and establish the chain
of custody of waste from its initial generation to the end
of its hazardous life. Copies of all such manifests shall
be submitted to the Commission on a timely basis.

(4) Ensure that charges for disposal of low-level waste
at the regional facility are sufficient to fully fund the
safe disposal and perpetual care of the regional facility
and that charges are assessed without discrimination as
to the party state of origin.

(5) Submit an annual report to the Commission on the
status of the regional facility which contains projections
of the anticipated future capacity.

(6) Notify the Commission immediately if any
exigency arises requiring the possible temporary or
permanent closure of a regional facility within the state
at a time earlier than was projected in the state's most
recent annual report to the Commission.
(7) Require that the institutional control period of any disposal facility be at least as long as the hazardous life, as defined in Article 1(h), of the radioactive materials that are disposed at that facility.

(8) Prohibit the use of any shallow land burial, as defined in Article 1(r), and develop alternative means for treatment, storage and disposal of low-level waste.

(9) Establish by law, to the extent not prohibited by federal law, requirements for financial responsibility, including, but not limited to:

(a) Requirements for the purchase and maintenance of adequate insurance by generators, brokers, carriers and operators of the regional facility;

(b) Requirements for the establishment of a long-term care fund to be funded by a fee placed on generators to pay for preventive or corrective measures of low-level waste to the regional facility; and

(c) Any further financial responsibility requirements that shall be submitted by generators, brokers, carriers and operators as deemed necessary by the host state.

(G) Each party state:

(1) Shall appropriate its portion of the Commission's initial and annual budgets as set out in Article 2 (C) (2) and (3).

(2) To the extent authorized by federal law, shall develop and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to volume reduction, packaging and transportation requirements and regulations as well as any other requirements specified by the regional facility. Such procedures shall include, but are not limited to:

(i) Periodic inspections of packaging and shipping practices;

(ii) Periodic inspections of low-level waste containers while in custody of carriers; and
(iii) Appropriate enforcement actions with respect to violations.

(3) To the extent authorized by federal law, shall after receiving notification from a host state, or other person, that a person in a party state has violated volume reduction, packaging, shipping or transportation requirements or regulations, take appropriate action to ensure that violations do not recur. Appropriate action shall include, but is not limited to, the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected. Appropriate action may also include suspension of the violator's use of the regional facility. Should such suspension be imposed, the suspension shall remain in effect until such time as the violator has, to the satisfaction of the party state imposing such suspension, complied with the appropriate requirements or regulations upon which the suspension was based and has taken appropriate action to ensure that such violation or violations do not recur.

(4) Shall maintain a registry of all generators and quantities generated within the state.

(H) In the event of liability arising from the operation of any regional facility and during and after closure of that facility, each party state shall share in that liability in an amount equal to that state's share of the region's low-level waste disposed of at the facility. If such liability arises from negligence, malfeasance or neglect on the part of a host state or any party state, then any other host or party state(s) may make any claim allowable under law for that negligence, malfeasance or neglect. If such liability arises from a particular waste shipment or shipments to, or quantity of waste or condition at, the regional facility, then any host or party state may make any claim allowable under law for such liability. The percentage of waste shall be based on volume of waste or total curie content.

(I) A party state which fails to fulfill its obligations, including timely funding of the Commission may have its privileges under the Compact suspended or its membership in the Compact revoked by the Commission
and be subject to any other legal and equitable remedies available to the party states.

Article 4

Prohibited Acts and Penalties

(A) It shall be unlawful for any person to dispose of low-level waste within the region except at a regional facility unless authorized by the Commission.

(B) After establishment of the regional facility or facilities, it shall be unlawful for any person to dispose of any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the Commission and by law of the host state in which said disposal takes place. For the purposes of this Compact, waste generated within the region excludes radioactive material shipped from outside the party states to a waste management facility within the region. In determining whether to grant such authorization, the factors to be considered by the Commission shall include, but not be limited to, the following:

(1) The impact on the health, safety and environmental quality of the citizens of the party states;

(2) The impact of importing waste on the available capacity and projected life of the regional facility;

(3) The availability of a regional facility appropriate for the safe disposal of the type of low-level waste involved.

(C) Any and all low-level waste generated within the region shall be disposed of at a regional facility, except for specific cases agreed upon by the Commission, with the affirmative votes by a majority of the Commission members of the host state(s) affected by the decision.

(D) Generators, brokers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct or relationships in accordance with all laws relating thereto. The party states shall impose a fine for any violation in an amount equal to the present and future costs associated with correcting
any harm caused by the violation and shall assess
punitive fines or penalties if it is deemed necessary. In
addition, the host state shall bar any person who violates
host state or federal regulations from using the regional
facility until that person demonstrates to the satisfaction
of the host state their ability and willingness to comply
with the law.

(E) No commissioner, officer or employee shall:

(1) Be financially interested, either directly or
indirectly, in a contract, sale, purchase, lease or transfer
of real or personal property to which the Commission
is a party.

(2) Solicit or accept money or any other thing of value
in addition to the expenses paid to him by the Commiss-
ion for services performed within the scope of his
official duties.

(3) Offer money or anything of value for or in
consideration of obtaining an appointment, promotion or
privilege in his employment with the Commission.

(F) Any officer or employee who shall willfully violate
any of the provisions of this article shall forfeit his office
or employment.

(G) Any contract or agreement knowingly made in
contravention of this section is void.

(H) Officers and employees of the Commission shall be
subject, in addition to the provisions of this section, to
such criminal and civil sanctions for misconduct in
office as may be imposed by federal law and the law of
the signatory state in which such misconduct occurs.

Article 5
Eligibility, Entry into Effect,
Congressional Consent, Withdrawal

(A) Only the states of Pennsylvania, West Virginia,
Delaware and Maryland are eligible to become parties
to this Compact.

(B) An eligible state may become a party state by
legislative enactment of this Compact or by executive
order of the governor adopting this Compact: Provided,

That a state becoming a party state by executive order
shall cease to be a party state upon adjournment of the
first general session of its legislature convened thereaf-
ter, unless the legislature shall have enacted this
Compact before such adjournment.

(C) This Compact shall take effect when it has been
enacted by the legislatures of Pennsylvania and one or
more eligible states. However, subsections (B) and (C)
of Article 4 shall not take effect until Congress has
consented to this Compact. Every fifth year after such
consent has been given, Congress may withdraw
consent.

(D) A party state may withdraw from the Compact by
repealing the enactment of this Compact, but no such
withdrawal shall become effective until two years after
enactment of the repealing legislation. If the withdrawing
state is a host state, any regional facility in that state
shall remain available to receive low-level waste
generated within the region until five years after the
effective date of the withdrawal.

Article 6

Construction and Severability

(A) The provisions of this Compact shall be broadly
construed to carry out the purposes of the Compact, but
the sovereign powers of a party state shall not unneces-
sarily be infringed.

(B) If any part or application of this Compact is held
invalid, the remainder, or its application to other
situations or persons, shall not be affected.

§29-1H-10. Fiscal implementation.

1 The term “budgetary processes” in Article 2(C)(2) of
the Compact shall be construed to include the presenta-
tion by the Commission of its proposed budget for each
fiscal period to the budget office of the department of
finance and administration for study and consideration,
and each such budget shall include a statement of
moneys required to administer, manage and support the
Commission during the ensuing fiscal period. The
statement shall include any request for appropriation of funds by the state of West Virginia and shall be accompanied by a tabulation of similar requests which the Commission makes or expects to make to each other signatory party, and the formula or factors upon which such respective requests are based. The governor is authorized to take such action as may be necessary and proper in his discretion to effectuate the Compact, and the initial organization and operation of the Commission, and the Legislature may appropriate such funds as it considers necessary to carry out the provisions of this article.

CHAPTER 114

(Com. Sub. for H. B. 2273—By Mr. Speaker, Mr. Chambers, and Delegate Swann, by request of the Executive)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article eleven of said chapter by adding thereto a new section, designated section one-a; to amend article twenty, chapter thirty-one of said code by adding thereto a new section, designated section twenty-five, all relating to municipalities; providing for the collection of minimum costs against certain defendants by municipal courts; payment of costs collected to the regional jail and prison development fund in the state treasury; requiring the regional jail and prison authority to comply with the provisions of the West Virginia Regional Jail and Prison Authority Act; completion of comprehensive plan; formation of regions; appointment of regional jail commissions; development of jail and prison standards; obtaining land for regional jails; consideration of consolidation of regional jail system with the state correctional system; and collection of moneys.

Be it enacted by the Legislature of West Virginia:

That section one, article eleven, chapter eight of the code of
West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article eleven of said chapter be further amended by adding thereto a new section, designated section one-a; and that article twenty, chapter thirty-one of said code be amended by adding thereto a new section, designated section twenty-five, all to read as follows:

Chapter

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines against nonresidents.

§8-11-1a. Disposition of criminal costs into state treasury account for regional jail and prison development fund.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines against nonresidents.

1 To carry into effect the powers and authority conferred upon any municipality or its governing body by the provisions of this chapter or any past or future act of the Legislature of this state, the governing body shall have plenary power and authority to make and pass all needful ordinances, orders, bylaws, acts, resolutions, rules and regulations, not contrary to the Constitution and laws of this state; and, for a violation thereof, to prescribe reasonable penalties in the form of fines, forfeitures and imprisonment in the county jail or the place of imprisonment in such municipality, if there be one, for a term not exceeding thirty days. Such fines, forfeitures and imprisonment shall be recovered, imposed or enforced under the judgment of the mayor of such municipality or the individual lawfully exercising his functions, or the police court judge or municipal
court judge of a city, if there be one, and may be
suspended upon such reasonable conditions as may be
imposed by such mayor, other authorized individual or
judge. Any municipality may also maintain a civil action
in the name of the municipality in the circuit court of
the county in which the municipality or the major
portion of the territory thereof is located to obtain an
injunction to compel compliance with, or to enjoin a
violation or threatened violation of, any ordinance of
such municipality, and such circuit court shall have
jurisdiction to grant the relief sought. A certified
transcript of a judgment for a fine rendered by a
municipal court may be filed in the office of the clerk
of a circuit court and docketed in the judgment lien book
kept in the office of the clerk of the county commission
in the same manner and with the same effect as the
filing and docketing of a certified transcript of judg-
ment rendered by a magistrate court as provided for in
section two, article six, chapter fifty of this code. The
judgment shall include costs assessed against the
defendant. In addition to any other costs which may be
lawfully imposed, an additional cost shall be imposed in
an amount of not less than twenty-two dollars in each
proceeding, except that such additional cost shall not be
assessed for a traffic offense that is not a moving
violation or an offense for which the ordinance does not
provide for a period of incarceration. Of the twenty-two
dollars imposed as an additional cost, two dollars shall
be an administrative cost to be retained by the
municipality.

Execution shall be by fieri facias issued by the clerk
of the circuit court in the same manner as such writs
are issued on judgments for a fine rendered by circuit
courts or other courts of record under the provisions of
section eleven, article four, chapter sixty-two of this
code.

§8-11-1a. Disposition of criminal costs into state treasury
account for regional jail and prison develop-
ment fund.

The clerk of each municipal court or such person
designated to receive fines and costs shall at the end of
each month pay into the regional jail and prison development fund in the state treasury an amount equal to twenty dollars of the costs collected in each proceeding except for traffic offenses that are not moving violations: Provided, That in a case where a defendant has failed to pay all costs assessed against him, no payment shall be made to the regional jail and prison development fund unless and until the defendant has paid all costs which, when paid, are available for the use and benefit of the municipality.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON AUTHORITY.

§31-20-25. Further duties of the authority.

The Legislature hereby finds that the regional jail and prison authority has not complied with the provisions of this article in certain areas and by this section imposes further duties upon the authority in order to save the taxpayers of this state unnecessary expense in the development of the regional jail system.

No moneys shall be expended for regional jail construction from the regional jail and development fund and no final site selection for a regional jail shall be made by the regional jail and prison authority until (1) the regional jail commissions are formed and activated under the provisions of section six, article twenty, chapter thirty-one of this code, and (2) regional jail commission representatives are named to the regional jail and prison authority as provided for in section three, article twenty, chapter thirty-one of this code, and (3) the regional jail commission for the region in which a jail is to be constructed submits the report provided for under the provisions of section seven, article twenty, chapter thirty-one of this code: Provided, That this section shall not apply to the regional jail commission previously established for the region consisting of Berkeley, Morgan and Jefferson counties.

Notwithstanding any other provision of this article, the regional jail and prison authority shall present a written report to the joint committee on government and finance of the Legislature no later than the meeting of
such committee in the month of December, one thousand
nine hundred eighty-seven, which will show that the
authority has done the following:
(a) Completed a comprehensive plan as required in
section five of this article;
(b) Specified which counties are to be formed into
regions as required in section five of this article;
(c) Appointed a regional jail commission in each
region as required by section six of this article;
(d) Developed through the jail and prison standards
commission, jail and prison standards as required by
section nine of this article;
(e) That the authority in obtaining or attempting to
obtain land or buildings for regional jail facilities has
considered all available options which will minimize
costs while maximizing the effectiveness of this article,
including, but not limited to, the option of obtaining
land through offers of such by county or local govern-
ments; and
(f) That the authority has developed plans which will
utilize regional jail facilities for the housing of convicted
felons who have committed nonviolent crimes. Such
plans are to provide that the convicted felons shall be
housed separately from those persons serving time for
misdemeanor offenses. The development of the plans
shall be a cooperative effort between the authority and
the department of corrections inasmuch as it is the
intent of the Legislature that the penal system of this
state shall be a consolidated system of both the regional
jail system and the state correctional institutions.

CHAPTER 115

(Com. Sub. for H. B. 2252—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 14, 1987; in effect from passage. Approved by the Governor.]
one thousand nine hundred thirty-one, as amended, relating to the toll road study commission; powers and duties of the commission; interpretation of article; extending the commission; and termination of the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. TOLL ROAD STUDY COMMISSION.


§17-2B-6. Interpretation of article; termination of commission.


1 The commission shall have the following powers, duties and responsibilities:

3 (a) To conduct a thorough and comprehensive study into the various ways and means of financing the construction and maintenance of a modern and efficient system of roads and highways which would be in addition to or in augmentation of or in conjunction with already existing roads and highways, with particular, but not exclusive, emphasis upon the feasibility, desirability and prudence of utilizing the imposition of tolls upon the users of such roads and highways, either alone or together with other means and methods of financing the construction and maintenance of the same;

14 (b) Special attention shall be given to planning, financing and construction of a modern highway connecting the Appalachian Corridor "G" highway at Chapmanville with Interstate Highway 64 at Huntington; and the planning, financing, and construction of Appalachian Corridor "H";

20 (c) To file an interim report as to its progress and tentative conclusions with the governor, the president of the Senate and the speaker of the House of Delegates
not later than the second Wednesday in January, in the year one thousand nine hundred eighty-six;

(d) To file its final report with respect to its findings and conclusions, together with any legislation it deems appropriate to recommend and as it deems necessary to carry its findings and conclusions into effect with the governor, the president of the Senate and the speaker of the House of Delegates not later than the second Wednesday in January in the year one thousand nine hundred eighty-eight;

(e) To employ such legal, technical, investigative, clerical, stenographic, advisory and other personnel as it deems necessary and needful and to fix the reasonable compensation of such persons as may be so employed;

(f) To request such information and data from any state officer or agency or from any political subdivision of the state as the commission may deem necessary to assist it in the performance of its duties and it shall be the duty of all such officers and agencies to cooperate with and assist the commission in and about the completion of its studies and deliberations;

(g) To confer with representative citizens and groups of the private, business and industrial sectors with respect to all matters deemed relevant to the study program of the commission; and

(h) To perform every other act necessary or desirable to carry out any of the other powers, duties or responsibilities enumerated in this article.

§17-2B-6. Interpretation of article; termination of commission.

(a) The provisions of this article shall be liberally construed in order to permit the commission sufficient latitude for the orderly completion of its studies and duties.

(b) The commission shall cease its existence on the first day of July, one thousand nine hundred eighty-eight.
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 twenty-four-a, relating to requiring on the state road system the construction of guardrails using wooden posts; exception.

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 twenty-four-a, to read as follows:

ARTICLE 4. STATE ROAD SYSTEM.
§17-4-24a. Guardrail construction.

1 Beginning the first day of July, one thousand nine hundred eighty-eight, any guardrail placed or replaced in new or existing locations on the state road system must be constructed using wooden posts unless use of another material would reduce the costs of such construction or reconstruction: Provided, That when guardrails are damaged, materials of a like kind may be used.
institutions, roads and bridges to control litter; allowing good time credited to inmates for said work.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. COUNTY CONVICT ROAD FORCE.

§17-15-4. Work by prisoners; relief of sheriffs and others from liability for injuries, etc.

(a) Any person convicted of a criminal offense and sentenced to confinement in a county or regional jail shall, as incident to such sentence of confinement, be required to perform labor within the jail, as a trustee or otherwise, or in and upon the buildings, grounds, institutions, roads, bridges, streams or other public works of the county or the area within which the regional jail is located if he or she meets the following criteria:

(1) Such person is at least eighteen years of age;

(2) Such person is physically and mentally sound and has not been exempted for medical reasons from such work by a licensed physician or other medical professional; and

(3) Such person is deemed by the county commission, the sheriff or the regional jail commission not to pose a threat to the community if released for work purposes.

(b) The work described in the subsection (a) of this section shall be performed under the supervision, care and custody of the county commission, the regional jail commission, the sheriff, his deputies, correctional officers or other person charged with inmate supervision to perform maintenance or control litter in this state.

(c) In order to effectuate the provisions of this section the county commission, the sheriff or the regional jail commission shall promulgate rules and regulations for the safe and useful employment of inmate labor.

(d) Notwithstanding any provision of this code to the contrary, the county commission, its members and agents, the regional jail commission, its members or
agents, the sheriff, his deputies, correctional officers and agents shall be immune from liability of any kind for accidents, injuries or death to such inmate except for accident, injury or death resulting directly from gross negligence or malfeasance.

(e) The sheriff of the county in which the work is to be performed, with the approval of the county commission, or the regional jail commission may hire or appoint any personnel necessary for the supervision of inmate labor.

(f) Nothing in this section shall be construed to allow the use of inmate labor for private projects or as contract employees of for profit businesses.

(g) Any inmate who performs work pursuant to the provisions of this section shall receive as sole and full compensation therefor, a reduction in his or her term of incarceration of not more than twenty-five percent of the original sentence excluding any other statutorily granted "good time". Each eight-hour period of approved work shall entitle an inmate to one day's sentence reduction: Provided, That any "good time" earned pursuant to the provisions of this section shall be in addition to any other reduction of sentence the inmate may accumulate.

(h) Any person being held as a detainee or for contempt may voluntarily participate in such labor as provided for in this section under the terms and conditions hereinbefore set forth.

CHAPTER 118

(COM. SUB. FOR S. B. 38—ORIGINATING IN THE SENATE COMMITTEE ON NATURAL RESOURCES)

(Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-b, relating to department of commerce, division of parks and recreation; discounts on
campground rental fees for West Virginia residents over the age of sixty-two.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-17b. Discounts for West Virginia residents over the age of sixty-two.

1 The commissioner shall provide to West Virginia citizens who are sixty-two years of age or older, and who document residency and age by a valid West Virginia driver's license, a fifty percent reduction in campground rental fees for each campsite to be used exclusively by said eligible camper: Provided, That the fifty percent reduction in campground rental fees shall only apply to those rentals occurring during the period of time beginning on the day after Labor Day and ending four days prior to Memorial Day.

CHAPTER 119
(H. B. 2072—By Delegate Givens)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections four, five and seven, article nine, chapter sixteen 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 nine-a, relating to tobacco usage restrictions; legislative intent; prohibiting the selling, giving or furnishing of any tobacco product to any person under the age of eighteen; prohibiting the use or possession of tobacco or tobacco products by person under the age of eighteen; prohibiting the use of tobacco or tobacco products in certain areas of certain public schools; requiring outdoor advertising and billboards for
smokeless tobacco products to carry certain public health warnings; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections four, five and seven, article nine, chapter sixteen 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 nine-a, to read as follows:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-1. Legislative intent.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalty.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalty.

§16-9A-4. Use of tobacco or tobacco products in certain areas of certain public schools prohibited; penalty.


§16-9A-1. Legislative intent.

1 The Legislature hereby declares it to be the policy and intent of this state to discourage and ban the use of tobacco products by minors. As basis for this policy, the Legislature hereby finds and accepts the medical evidence that smoking tobacco may cause lung cancer, heart disease, emphysema and other serious health problems while the use of smokeless tobacco may cause gum disease and oral cancer. It is the further intent of the Legislature in banning the use of tobacco products by minors to ease the personal tragedy and eradicate the severe economic loss associated with the use of tobacco and to provide the state with a citizenry free from the use of tobacco.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalty.

1 No person, firm or corporation may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of eighteen years:

4 (a) Any cigarette, cigarette paper or any other paper
prepared, manufactured or made for the purpose of
smoking any tobacco or tobacco product; or,

(b) Any cigar, pipe, snuff, chewing tobacco or tobacco
product, in any form.

Any person, firm or corporation violating any of the
provisions of subdivisions (a) or (b) of this section is
guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than ten nor more than twenty-
five dollars for the first offense, and for each subsequent
offense, not less than twenty-five nor more than three
hundred dollars.

§16-9A-3. Use or possession of tobacco or tobacco pro-
ducts by persons under the age of eighteen
years; penalty.

No person under the age of eighteen years shall have
on or about his or her person or premises or use any
cigarette, cigarette paper or any other paper prepared,
manufactured or made for the purpose of smoking any
tobacco products, in any form; or, any pipe, snuff,
chewing tobacco or tobacco product. Any person
violating the provisions of this section is punishable by
a fine of five dollars and notwithstanding the provisions
of section one, article five, chapter forty-nine, the
magistrate court shall have concurrent jurisdiction.

§16-9A-4. Use of tobacco or tobacco products in certain
areas of certain public schools prohibited; penalty.

Every person who shall smoke a cigarette or ci-
garettes, pipe, cigar or other implement, of any type or
nature, designed, used or employed for smoking any
tobacco or tobacco product; or who shall use any tobacco
product, whether chewing tobacco, snuff or otherwise,
in any building or part thereof used for instructional
purposes, in any school of this state, as defined in section
one, article one, chapter eighteen of this code, or on any
lot or grounds actually used for instructional purposes
of any such school of this state while such school is used
or occupied for school purposes, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
punished for each offense by a fine of not less than one
nor more than five dollars: Provided, That this prohi-
bition shall not be construed to prevent the use of any
tobacco or tobacco product in any faculty lounge or staff
lounge or faculty office or other area of said public
school not used for instructional purposes: Provided, however, That students do not have access thereto:
Provided further, That nothing herein contained shall be
construed to prevent any county board of education from
promulgating rules and regulations that further restrict
the use of tobacco or tobacco products, in any form, from
any other part or section of any public school building
under its jurisdiction.

§16-9A-5. Outdoor billboard advertisements for smoke-
less tobacco products, nuisance affecting public health.

(a) Any outdoor billboard advertisement for snuff and
chewing tobacco products must conspicuously display
one of the following statements:

"WARNING: THIS PRODUCT MAY CAUSE
MOUTH CANCER"

"WARNING: THIS PRODUCT MAY CAUSE
GUM DISEASE AND TOOTH LOSS"

"WARNING: THIS PRODUCT IS NOT A SAFE
ALTERNATIVE TO CIGARETTES"

The warnings shall be rotated every four months by
the manufacturer, packager or importer of snuff and
chewing tobacco products in an alternating sequence in
the advertisement for each brand of such tobacco
product. Such warning shall appear in the format and
type style prescribed under 15 U.S.C. 1333 (b) (3), as
amended.

No other warning, format, or type style in any outdoor
billboard advertisement shall be required by any state
or local statute or regulation.

(b) Any outdoor billboard advertisement that does not
conform to the provisions of this section shall be deemed
a nuisance affecting the public health.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the State Department of Education, Account No. 2860, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor has established the receipt and availability of federal funds for new programs, now available for expenditure in the current fiscal year of 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. 2860, chapter twenty-nine, 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 sums to the designated line items:

1 TITLE 2. APPROPRIATIONS.
2 Section 2. Appropriations of federal funds.
3 EDUCATIONAL
4 29—State Department of Education
5 (WV Code Chapters 18 and 18A)
6 Acct. No. 2860
7 8
9 10
11 1 Personal Services ...... $ 42,354
12 3 Current Expenses ...... 37,989
The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for current fiscal year 1986-87 to appropriate and permit use and expenditure of federal funds received in respect of a new program under the Drug-Free Schools and Communities Act of 1986, with such amounts to be available for expenditure upon the effective date of the bill. Any unexpended balance remaining at the end of fiscal year 1986-87 is hereby reappropriated for expenditure in next fiscal year 1987-88.

Chapter 121
(H. B. 3199—By Delegate Farley)

[Passed May 7, 1987; in effect July 1, 1987. 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 as specified herein of the balances contained at the close of the thirtieth day of June, one thousand nine hundred eighty-seven in the designated special revenue accounts of the Public Service Commission, Account No. 8280; of the Public Service Commission-Gas Pipeline Division, Account No. 8285; and of the Public Service Commission-Motor Carrier Division, Account No. 8290, and 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:

1 That the specified amounts of the balances, unexpended and unencumbered, contained in the special revenue accounts, as designated, and in the amounts as

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Equipment</td>
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<td>11</td>
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<td>Discretionary Funds</td>
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<td>Aid to Counties</td>
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hereinafter specified, available for expenditure in fiscal
year one thousand nine hundred eighty-eight, and as
appropriated by chapter twenty-nine, acts of the
Legislature, regular session, one thousand nine hundred
eighty-six, 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, at the close of the thirtieth
day of June, one thousand nine hundred eighty-seven,
and with such amounts to be thereafter available for
other and further appropriation or use after such date
and expiration: from Account No. 8280, $1,438,000 shall
be expired; from Account No. 8285, $386,000 shall be
expired; and from Account No. 8290, $425,000 shall be
expired.

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
specified amounts of the balances of the designated
special revenue accounts of the Public Service Commis-
sion, unexpended and unencumbered at the close of the
thirtieth day of June, one thousand nine hundred eighty-
seven, and with such amounts, totaling $2,249,000 in the
aggregate to be thereafter available for other and
further appropriation or budgetary use in the following
fiscal year of 1987-88.

CHAPTER 122
(Com. Sub. for H. B. 2100—By Mr. Speaker, Mr. Chambers)
Amended, committed to conference, passed May 14, 1987: in effect from passage.
Again vetoed by the Governor. Passed over veto.]

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

Be it enacted by the Legislature of West Virginia:

Title
1. General provisions.
2. Appropriations.
3. Administration.
Section 1. General policy.—The purpose of this bill 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-eight.

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

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

“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 collections. 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 article two, chapter five-a 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 article five, chapter 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 maintenance and repairs to structures and minor improvements 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 section twelve, article three, chapter 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 appropriated by this act, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of article three, chapter twelve 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 appropriations set out in this bill.

TITLE 2. APPROPRIATIONS.

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

AGRICULTURE
   Department of agriculture—Acct. No. 5100 .................................................. 650
   Department of agriculture (agricultural awards)—Acct. No. 5150 ........................................................................ 652
   Department of agriculture (division of rural resources)—Acct. No. 5130 .......................................................... 651
   Department of agriculture (forestry division)—Acct. No. 5160 ........................................................................ 652
   Department of agriculture (meat inspection)—Acct. No. 5140 .......................................................... 652
   Department of agriculture (soil conservation committee)—Acct. No. 5120 .................................................. 651
   Farm management commission—Acct. No. 5110 ........................................................................ 651

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   Human rights commission—Acct. No. 5980 ........................................................................ 658
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- **Educational broadcasting authority**—Acct. No. 2910.
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- **State board of education (vocational division)**—Acct. No. 2890.
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- **Teachers retirement board**—Acct. No. 2980.
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- **Governor's office (civil contingent fund)**—Acct. No. 1240.
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- **Governor's office (flood relief—federally declared disaster)**—Acct. No. 1260.
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- **Auditor's office (general administration)**—Acct. No. 1500.
- **Auditor's office (social security)**—Acct. No. 1510.
- **Auditor's office (unemployment compensation)**—Acct. No. 1520.
- **Department of finance and administration**—Acct. No. 2100.
- **Municipal bond commission**—Acct. No. 1700.
- **State board of insurance**—Acct. No. 2250.
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- **Treasurer's office**—Acct. No. 1600.
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- **Consolidated medical services fund**—Acct. No. 4190.
- **Department of human services**—Acct. No. 4050.
- **Department of veterans affairs**—Acct. No. 4040.
- **Department of veterans affairs (veterans home)**—Acct. No. 4010.
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- **State commission on aging**—Acct. No. 4060.
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§4. Appropriations of federal funds.

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PAYABLE FROM MEDICAL SCHOOL FUND
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PAYABLE FROM SPECIAL REVENUE FUND
Auditor’s office (land department operating fund)—Acct. No. 8120
Board of barbers and beauticians—Acct. No. 8220
Crime victims compensation fund—Acct. No. 8412
Department of agriculture—Acct. No. 8180
Department of banking—Acct. No. 8395
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  (division of purchasing—revolving fund)—Acct. No. 8140
  Department of finance and administration
  (information systems services division fund)—Acct. No. 8151
Department of natural resources—Acct. No. 8300
Department of public safety
  (drunk driving prevention fund)—Acct. No. 8355
  Department of public safety—Acct. No. 8350
General John McCausland Memorial Farm—Acct. No. 8194
Geological and economic development—Acct. No. 8589
Health care cost review authority—Acct. No. 8564
Insurance Commissioner—Acct. No. 8016
Public service commission—Acct. No. 8280
Public service commission (consumer advocate)—Acct. No. 8295
Public Service Commission (gas pipeline division)—Acct. No. 8285
Public service commission (motor carrier division)—Acct. No. 8290
Real estate commission—Acct. No. 8010
Regional jail and prison authority—Acct. No. 8081
State board of education (Rehabilitation division)—West
  Virginia Rehabilitation Center—Special account)—Acct. No. 8137
State health department—hospital services revenue account (special fund)
  (capital improvement, renovation and operation)—Acct. No. 8500
Treasurer’s office (abandoned and unclaimed property)—Acct. No. 8000
West Virginia alcohol beverage control commissioner—Acct. No. 8270
West Virginia board of regents (special capital improvement fund)—Acct. No. 8830
West Virginia board of regents (state system registration fee—
  revenue bond construction fund)—Acct. No. 8845
§5. Awards for claims against the state.


§7. Reappropriations—revenue sharing trust fund.

§8. Appropriations from federal block grants.

§9. Special revenue appropriations.

§10. State improvement fund appropriations.

§11. Specific funds and collection accounts.

§12. Specified funds newly available as part of state fund, general revenue, through budgetary expiration enactments and directed disposition thereof.


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

§16. Appropriations for local governments.

§17. Total appropriations.

§18. General school fund.
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 article two, chapter five-a of the code, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred eighty-eight.

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

Any unexpended balances remaining in federal funds at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

LEGISLATIVE

1—Senate

Acct. No. 1010

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year 1987-88</td>
<td>Fiscal Year 1987-88</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comp. of Members</td>
<td>$275,000*</td>
<td></td>
</tr>
<tr>
<td>Comp. and Per Diem of Officers and Employees</td>
<td>$1,042,125</td>
<td>215,000</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>522,500</td>
<td></td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>100,000</td>
<td></td>
</tr>
</tbody>
</table>
The appropriations for the senate for the fiscal year 1986-87 are to remain in full force and effect, and are hereby reappropriated to June 30, 1988. Any balances so reappropriated may be transferred and credited to the 1987-88 accounts.

Upon written request of the clerk of the senate, 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 senate, with approval of the president, is authorized to draw his requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the senate, for any bills for supplies and services that may have been incurred by the senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the senate offices, the requisitions for same to be accompanied by 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 upon the auditor for the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of
Officers and Employees or Current Expenses and
Contingent Fund of the senate.

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 1987 and payable
out of the amount appropriated for Compensation and
Per Diem of Officers and Employees.

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
for each classified and approved high and junior high
school and one for each elementary school within the
state.

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>$660,000*</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers</td>
<td></td>
</tr>
<tr>
<td>and Employees</td>
<td>$346,000</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>$420,000</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>$592,750</td>
</tr>
<tr>
<td>Total</td>
<td>$2,018,750</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 1986-87 are to remain in full force and effect
and are hereby reappropriated to June 30, 1988. Any
balances so reappropriated may be transferred and
credited to the 1987-88 accounts.

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

The clerk of the house of delegates, with approval of
the speaker, is authorized to draw 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 requisitions 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, notwithstanding such house resolution. The clerk of the house is hereby authorized to draw requisitions upon the auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees Fund or Current Expenses and Contingent Fund of the house of delegates.

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 the approval of the house committee on rules, and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the house of delegates.

3—Joint Expenses

Acct. No. 1030

(WV Code Chapter 4)

1 Unclassified ..................... $  — $ 4,307,936
Joint Committee on Government and Finance — 0
To Pay Cost of Legislative Printing — 0
Rule-Making Review Committee — 0
National Conference of State Legislatures — 0
Education Commission of the States — 0
Association of State Auditors, Comptrollers and Treasurers — 0
Council of State Governments’ Governmental Accounting Standards Board — 0

Total $4,307,936

The appropriation for Joint Expenses for the fiscal year 1986-87 is to remain in full force and effect and is hereby reappropriated to June 30, 1988. Any balances so reappropriated may be transferred and credited to the 1987-88 accounts.

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

Personal Services $16,904,320*
Annual Increment 159,296
Other Expenses 2,850,000
Judges’ Retirement System 1,163,810
Other Court Costs 2,650,024
### Judicial Training

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Program</td>
<td>— 250,000</td>
</tr>
<tr>
<td>Mental Hygiene Fund</td>
<td>— 400,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 15,000</td>
</tr>
</tbody>
</table>

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

Any unexpended balances remaining in this appropriation at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88. Any balances so reappropriated may be transferred and credited to the 1987-88 accounts.

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.

### EXECUTIVE

**5—Governor's Office**

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Description</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>$ 980,629</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ 2,529</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$ 138,876</td>
</tr>
<tr>
<td>Equipment</td>
<td>$ 1,464</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 1,195,498</td>
</tr>
</tbody>
</table>

### Office of Community and Industrial Development

(WV Code Chapter 5B)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$12,324,786</td>
</tr>
<tr>
<td></td>
<td>$ 4,926,721</td>
</tr>
<tr>
<td></td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
</tr>
<tr>
<td>6</td>
<td>The Economic Development Loan Fund</td>
</tr>
<tr>
<td>7</td>
<td>Regional Councils</td>
</tr>
<tr>
<td>8</td>
<td>WV Jobs Development Corporation</td>
</tr>
<tr>
<td>9</td>
<td>A.R.C. Assessment</td>
</tr>
<tr>
<td>10</td>
<td>WV Public Energy</td>
</tr>
<tr>
<td>11</td>
<td>Authority</td>
</tr>
<tr>
<td>12</td>
<td>Partnership Grants</td>
</tr>
<tr>
<td>13</td>
<td>Fire Departments</td>
</tr>
<tr>
<td>14</td>
<td>Civil Air Patrol</td>
</tr>
<tr>
<td>15</td>
<td>Aeronautics Commission</td>
</tr>
<tr>
<td>16</td>
<td>Airport Matching</td>
</tr>
<tr>
<td>17</td>
<td>Emergency Assistance</td>
</tr>
<tr>
<td>18</td>
<td>National Youth</td>
</tr>
<tr>
<td>19</td>
<td>Science Camp</td>
</tr>
<tr>
<td>20</td>
<td>To Local Entities</td>
</tr>
<tr>
<td>21</td>
<td>Transfer to State</td>
</tr>
<tr>
<td>22</td>
<td>Spending Units</td>
</tr>
<tr>
<td>23</td>
<td>International Trade Offices</td>
</tr>
<tr>
<td>24</td>
<td>WV Export Authority</td>
</tr>
<tr>
<td>25</td>
<td>Institute for Trade Development</td>
</tr>
<tr>
<td>26</td>
<td>Marshall University</td>
</tr>
<tr>
<td>27</td>
<td>Center for Economic Analysis and</td>
</tr>
<tr>
<td>28</td>
<td>Statistics—WVU</td>
</tr>
<tr>
<td>29</td>
<td>Labor Management Advisory Council</td>
</tr>
<tr>
<td>30</td>
<td>WV Industry Assistance Corporation</td>
</tr>
<tr>
<td>31</td>
<td>Any unexpended balances remaining in</td>
</tr>
</tbody>
</table>


Total $12,324,786 $4,926,721
Emergency Assistance (account no. 1210-18), Flood (account no. 1210-19), Aeronautics Commission—Airport Matching (account no. 1210-23) and International Trade Offices (account no. 1210-28) at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

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

(WV Code Chapter 5)

Acct. No. 1220

Any unexpended balances remaining in the appropriations for Emergency Jobs Program—Public Service Jobs (account no. 1220-04) and Emergency Jobs Program—Public Service Jobs (account no. 1220-05) at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

8—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Acct. No. 1230

Unclassified—Total $273,949

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

Unclassified—Total $775,000

Any unexpended balance remaining in the appropriation (account no. 1240-06) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

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.

10—Governor's Office-Flood Relief—Federally Declared Disaster

Acct. No. 1260

Any unexpended balance remaining in the appropriation (account no. 1260-06) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88. The purpose of this appropriation is for use upon notification of a federally declared disaster.

11—Office of Emergency Services

(WV Code Chapter 15)

Acct. No. 1300

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$3,061,469</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$251,500*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$0</td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>To Local Entities</td>
<td>$0</td>
</tr>
<tr>
<td>Transfer to State</td>
<td>$0</td>
</tr>
<tr>
<td>Spending Units</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td>$3,061,469</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)

Acct. No. 1500

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of State Auditor</td>
<td>$46,800</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$1,911,368</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
</tbody>
</table>
### 13—Auditor's Office—Social Security

(WV Code Chapter 12)

Acct. No. 1510

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>To Match Contributions</td>
<td>$10,988,846</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Auditor's Office—Social Security (account no. 1510-06) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

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 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.

### 14—Auditor's Office—Unemployment Compensation

(WV Code Chapter 12)

Acct. No. 1520

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$402,000</td>
</tr>
</tbody>
</table>

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 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 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)

Acct. No. 1600

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Treasurer</td>
<td>$50,400</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$901,071</td>
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<tr>
<td>Other Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>Microfilm Program</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td>$951,471</td>
</tr>
</tbody>
</table>

16—Treasurer's Office—School Building Sinking Fund

(WV Code Chapter 12)

Acct. No. 1650

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$14,251,500</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 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

17—Municipal Bond Commission

(WV Code Chapter 13)

Acct. No. 1700

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Unclassified</td>
<td>$102,212</td>
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<tr>
<td>Personal Services</td>
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</table>
### Ch. 122 STATE APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>2018-19</th>
<th>2019-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$</td>
<td>$ 102,212</td>
</tr>
</tbody>
</table>

**18—State Tax Department**

(WV Code Chapter 11)

Acct. No. 1800

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>2018-19</th>
<th>2019-20</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$</td>
<td>$ 13,915,740*</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>7</td>
<td>Circuit Breaker</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>8</td>
<td>Reimbursement</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>9</td>
<td>Property Reappraisal</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>10</td>
<td>Program</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td>$</td>
<td>$ 13,915,740*</td>
</tr>
</tbody>
</table>

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

Any unexpended balances remaining in the appropriations for Other Expenses (account no. 1800-07) and Property Reappraisal Program (account no. 1800-09) at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

**19—Department of Finance and Administration**

(WV Code Chapter 5A)

Acct. No. 2100

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>2018-19</th>
<th>2019-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$</td>
<td>$ 4,253,925*</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>141,750</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>1,440</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>1,231,593</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>1,000</td>
<td>—</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>604,000</td>
<td>—</td>
</tr>
<tr>
<td>7</td>
<td>Postage</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>
8 Utilities ......................... — —
9 Public Transportation ...... — —
10 Fire Service Fee ............. — —
11 Building Equipment
12 and Supplies .................. — —
13 Southern Regional
14 Education Board ............. — —
15 Council of State
16 Governments ................... — —
17 National Governors' Association ........ — —
19 Southern States
20 Energy Board ................. — —
21 Total ........................... $1,979,783 $4,253,925

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

22 Any unexpended balance remaining in the Postage account (account no. 2100-06) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

26 Any unexpended balance remaining in the appropriation Retrofit Governor's Elevator (account no. 2100-28) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88 and redesignated to Retrofit Elevator in (1) Attorney General's Section and (2) Retrofit Elevator in the Capitol Building.

The department of highways shall reimburse the revolving fund monthly for all actual expenses incurred pursuant to the provisions of section thirteen, article two-a, chapter seventeen of the code.

20—State Board of Insurance
(WV Code Chapter 29)

Acct. No. 2250

1 Unclassified ..................... $ — $2,909,339
2 Personal Services ............... — —
3 Annual Increment ............... — —
4 Current Expenses ............... — —
The unclassified appropriation includes funding for the purpose of paying premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees for property, casualty and fidelity insurance for the various state agencies. Should this appropriation be insufficient to meet the requirements of the state spending units, any excess costs shall be a proper charge against the units and each spending unit shall reimburse to the state board of insurance any amounts required for that department for costs in excess of this appropriation.

These funds may be transferred to a special account for the payment of premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees and may be transferred to a special account for disbursement for payment of premiums and insurance losses.

LEGAL

21—Attorney General

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

Acct. No. 2400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Attorney</td>
<td>$50,400</td>
</tr>
<tr>
<td>2</td>
<td>General</td>
<td>$</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>$2,510,442</td>
</tr>
<tr>
<td>4</td>
<td>Other Personal</td>
<td>$</td>
</tr>
<tr>
<td>5</td>
<td>Services</td>
<td>$</td>
</tr>
<tr>
<td>6</td>
<td>Annual Increment</td>
<td>$</td>
</tr>
<tr>
<td>7</td>
<td>Current Expenses</td>
<td>$</td>
</tr>
<tr>
<td>8</td>
<td>Equipment</td>
<td>$</td>
</tr>
<tr>
<td>9</td>
<td>Publication of Reports</td>
<td>$</td>
</tr>
<tr>
<td>10</td>
<td>and Opinions</td>
<td>$</td>
</tr>
<tr>
<td>11</td>
<td>To Protect the</td>
<td>$</td>
</tr>
<tr>
<td>12</td>
<td>Resources or Tax</td>
<td>$</td>
</tr>
</tbody>
</table>
Structure of the State in Controversies or Legal Proceedings Affecting Same

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>$2,560,842</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 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

When legal counsel or secretarial help is appointed by the attorney general for any state spending unit, this account shall be reimbursed from such unit’s appropriated account in an amount agreed upon by the attorney general and the proper authority of said spending unit.

22—Commission on Uniform State Laws
(WV Code Chapter 29)
Acct. No. 2450

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$11,000</td>
</tr>
<tr>
<td>2</td>
<td>To pay expenses of members of the commission on uniform state laws</td>
<td></td>
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</table>

INCORPORATING AND RECORDING

23—Secretary of State
(WV Code Chapters 3, 5 and 59)
Acct. No. 2500

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Secretary of State</td>
<td>$43,200</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified</td>
<td>$676,602</td>
</tr>
<tr>
<td>4</td>
<td>Other Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>5</td>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>6</td>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>7</td>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$719,802</td>
</tr>
</tbody>
</table>
### 24—State Elections Commission

(WV Code Chapter 3)

Acct. No. 2510

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

### EDUCATIONAL

### 25—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>Unclassified . . . . . . . . . . . . . . . . . .</td>
<td>$157,142,886</td>
</tr>
<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>Repairs and</td>
<td>—</td>
</tr>
<tr>
<td>Alterations . . . . . . . . . . . . . . . . . .</td>
<td>—</td>
</tr>
<tr>
<td>Equipment . . . . . . . . . . . . . . . . . . .</td>
<td>—</td>
</tr>
<tr>
<td>Bureau of</td>
<td>—</td>
</tr>
<tr>
<td>Coal Research . . . . . . . . . . . . . . . . .</td>
<td>—</td>
</tr>
<tr>
<td>National Research</td>
<td>—</td>
</tr>
<tr>
<td>Center for</td>
<td>—</td>
</tr>
<tr>
<td>Coal and Energy</td>
<td>—</td>
</tr>
<tr>
<td>Doctoral Research</td>
<td>—</td>
</tr>
<tr>
<td>—WVU . . . . . . . . . . . . . . . . . . . . . .</td>
<td>—</td>
</tr>
<tr>
<td>Agriculture and</td>
<td>—</td>
</tr>
<tr>
<td>Forestry</td>
<td>—</td>
</tr>
<tr>
<td>Experiment</td>
<td>—</td>
</tr>
<tr>
<td>Station—WVU . . . . . . . . . . . . . . . . . .</td>
<td>—</td>
</tr>
<tr>
<td>Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>—</td>
</tr>
<tr>
<td>Experiments . . . . . . . . . . . . . . . . . .</td>
<td>—</td>
</tr>
<tr>
<td>Jackson’s Mill</td>
<td>—</td>
</tr>
<tr>
<td>State 4-H Camp</td>
<td>—</td>
</tr>
<tr>
<td>Center for</td>
<td>—</td>
</tr>
<tr>
<td>Economic</td>
<td>—</td>
</tr>
<tr>
<td>Development . . . . . . . . . . . . . . . . . .</td>
<td>—</td>
</tr>
<tr>
<td>Total . . . . . . . . . . . . . . . . . . . . . .</td>
<td>$157,142,886</td>
</tr>
</tbody>
</table>


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

### 26—West Virginia Board of Regents
(WV Code Chapter 18)

#### Acct. No. 2800

| 1 | Unclassified $ | $ 5,326,593 |
| 2 | Personal Services | $0 |
| 3 | Annual Increment | $0 |
| 4 | Current Expenses | $0 |
| 5 | Equipment | $0 |
| 6 | Higher Education | $0 |
| 7 | Grant Program | $0 |
| 8 | Tuition Contract | $0 |
| 9 | Programs | $0 |
| 10 | Total | $ 5,326,593 |

### 27—West Virginia School of Osteopathic Medicine
(WV Code Chapter 18)

#### Acct. No. 2810

| 1 | Unclassified $ | $ 4,347,894 |
| 2 | Personal Services | $0 |
| 3 | Annual Increment | $0 |
| 4 | Current Expenses | $0 |
| 5 | Repairs and Alterations | $0 |
| 6 | Equipment | $0 |
| 7 | Primary Health Training | $0 |
| 8 | Training | $0 |
| 9 | Total | $ 4,347,894 |

### 28—Marshall University—Medical School
(WV Code Chapter 18)

#### Acct. No. 2840

| 1 | Unclassified $ | $ 6,404,461 |
### 29—West Virginia University—
*Schools of Health Sciences*  
*(WV Code Chapter 18)*

Acct. No. 2850

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$27,643,290</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$5,334,508</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>0</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>0</td>
</tr>
<tr>
<td>Equipment</td>
<td>0</td>
</tr>
<tr>
<td>Family Practice Residency</td>
<td>0</td>
</tr>
<tr>
<td>Program</td>
<td>0</td>
</tr>
<tr>
<td>Community Hospital</td>
<td>0</td>
</tr>
<tr>
<td>Residency Support</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>$27,643,290</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Cancer Research Center (account no. 2850-23) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during fiscal year 1987-88.  

May be transferred to West Virginia university—medical school fund upon requisition of the governor.

### 30—State Department of Education  
*(WV Code Chapters 18 and 18A)*

Acct. No. 2860

<table>
<thead>
<tr>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$6,600</td>
</tr>
<tr>
<td>Personal Services</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>$5,334,508</td>
</tr>
<tr>
<td>Item</td>
<td>Amount</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>-0-</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>-0-</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>-0-</td>
</tr>
<tr>
<td>Equipment</td>
<td>-0-</td>
</tr>
<tr>
<td>Statewide Testing Program</td>
<td>-0-</td>
</tr>
<tr>
<td>Personal Services</td>
<td>-0-</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>-0-</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>-0-</td>
</tr>
<tr>
<td>Equipment</td>
<td>-0-</td>
</tr>
<tr>
<td>Personal Services</td>
<td>-0-</td>
</tr>
<tr>
<td>Annual Increment</td>
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<tr>
<td>Other Expenses</td>
<td>-0-</td>
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<tr>
<td>Equipment</td>
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<tr>
<td>Aid to Children's Home</td>
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<tr>
<td>Child Development Program</td>
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<tr>
<td>Tuition Waiver</td>
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<tr>
<td>Microcomputer</td>
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<tr>
<td>Network</td>
<td>-0-</td>
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<td>Program</td>
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<tr>
<td>Total</td>
<td>$ 6,600</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Tuition Waiver (account no. 2860-21) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

The above appropriation includes the state board of education and their executive office.
### 31—State Department of Education—School Lunch Program

(WV Code Chapters 18 and 18A)

Acct. No. 2870

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$46,269,791</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$2,048,804</td>
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<tr>
<td>Annual Increment</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
</tr>
<tr>
<td>Aid to Counties—Includes</td>
<td></td>
</tr>
<tr>
<td>Hot Lunches and Canning</td>
<td></td>
</tr>
<tr>
<td>for Hot Lunches</td>
<td></td>
</tr>
<tr>
<td>To Local Entities</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$46,269,791</td>
</tr>
</tbody>
</table>

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

(WV Code Chapters 18 and 18A)

Acct. No. 2890

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$9,284,331</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$14,857,779</td>
</tr>
<tr>
<td>Annual Increment</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
</tr>
<tr>
<td>Vocational Aid</td>
<td></td>
</tr>
<tr>
<td>Adult Basic Education</td>
<td></td>
</tr>
<tr>
<td>Start-up Funds and Equipment for New and Existing</td>
<td></td>
</tr>
<tr>
<td>Facilities</td>
<td></td>
</tr>
<tr>
<td>New and Expanding</td>
<td></td>
</tr>
<tr>
<td>Industries</td>
<td></td>
</tr>
<tr>
<td>To Local Entities</td>
<td></td>
</tr>
<tr>
<td>Capital Outlay (Construction)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$9,284,331</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropri-
ations for New and Expanding Industries (account no. 2890-18) and Capital Outlay (account no. 2890-20) at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

33—Educational Broadcasting Authority

(WV Code Chapter 10)

Acct. No. 2910

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$1,351,250</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$4,694,772</td>
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<tr>
<td>Annual Increment</td>
<td>$-0-</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$-0-</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$-0-</td>
</tr>
<tr>
<td>Equipment</td>
<td>$-0-</td>
</tr>
<tr>
<td>Regional ETV and Radio</td>
<td>$-0-</td>
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<tr>
<td>Annual Increment</td>
<td>$-0-</td>
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<tr>
<td>Capital Outlay—Equipment</td>
<td>$-0-</td>
</tr>
<tr>
<td>Total</td>
<td>$1,351,250</td>
</tr>
</tbody>
</table>

The Unclassified appropriation includes funding for the construction and operation of regional ETV and radio stations. These funds may be transferred to special revenue accounts for matching college, university, city, county, federal and/or other generated revenues.

34—State Department of Education

Acct. No. 2920

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor’s Lighthouse</td>
<td>$-0-</td>
</tr>
<tr>
<td>School Program—</td>
<td>$-0-</td>
</tr>
<tr>
<td>Unclassified—Total</td>
<td>$-0-</td>
</tr>
</tbody>
</table>

35—State Department of Education—State Aid to Schools

(WV Code Chapters 18 and 18A)

Acct. No. 2930

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Educators</td>
<td>$-0-</td>
</tr>
<tr>
<td>Service Personnel</td>
<td>$-0-</td>
</tr>
<tr>
<td>Total</td>
<td>$-0-</td>
</tr>
</tbody>
</table>
### State Department of Education—State Aid to Schools

(WV Code Chapters 18 and 18A)

**Acct. No. 2950**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Professional Educators</td>
<td>$484,483,670</td>
</tr>
<tr>
<td>2 Service Personnel</td>
<td>176,024,708</td>
</tr>
<tr>
<td>3 Fixed Charges</td>
<td>64,866,256</td>
</tr>
<tr>
<td>4 Transportation</td>
<td>26,417,605</td>
</tr>
<tr>
<td>5 Administration</td>
<td>4,554,589</td>
</tr>
<tr>
<td>6 Other Current Expenses</td>
<td>42,933,045</td>
</tr>
<tr>
<td>7 Improve Instruction Programs</td>
<td>28,144,279</td>
</tr>
<tr>
<td>8 Basic Foundation</td>
<td>827,424,152</td>
</tr>
<tr>
<td>9 Less Local Share</td>
<td>(109,074,939)</td>
</tr>
<tr>
<td>10 Total Basic</td>
<td>718,349,213</td>
</tr>
<tr>
<td>11 Total State Aid</td>
<td>718,749,213</td>
</tr>
</tbody>
</table>

### State Department of Education—Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

**Acct. No. 2960**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td>$21,875,231</td>
</tr>
<tr>
<td>2 Personal</td>
<td>$9,412,379</td>
</tr>
<tr>
<td>3 Services</td>
<td>0</td>
</tr>
<tr>
<td>4 Annual</td>
<td>0</td>
</tr>
<tr>
<td>5 Increment</td>
<td>0</td>
</tr>
<tr>
<td>6 Current Expenses</td>
<td>0</td>
</tr>
<tr>
<td>7 Repairs and Alterations</td>
<td>0</td>
</tr>
<tr>
<td>8 Out-of-State</td>
<td>0</td>
</tr>
<tr>
<td>9 Instruction</td>
<td>0</td>
</tr>
</tbody>
</table>
The Unclassified appropriation includes funding for Out-of-State Instruction and 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 Unclassified appropriation for Aid to Counties may be expended by county boards of education for the initiation and/or improvement 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 renovations and other costs directly related to the special education delivery process prescribed by the state board of education and may also be used for nonpersonnel costs associated with the maintenance of special education programs.

The Unclassified appropriation includes funding for Special State Projects and 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 statewide training activities or other programs benefiting exceptional children.

### 38—Teachers' Retirement Board
*(WV Code Chapter 18)*

<table>
<thead>
<tr>
<th>Acct. No. 2980</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Teachers’ Retirement Fund</td>
<td>$</td>
<td>17,240,910</td>
</tr>
<tr>
<td>2 Supplemental Benefits for Annuitants</td>
<td>—</td>
<td>6,000,000</td>
</tr>
<tr>
<td>3 Total</td>
<td>$</td>
<td>23,240,910</td>
</tr>
</tbody>
</table>

### 39—West Virginia Schools for the Deaf and the Blind
*(WV Code Chapters 18 and 18A)*

<table>
<thead>
<tr>
<th>Acct. No. 3330</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td>$</td>
<td>5,371,235</td>
</tr>
<tr>
<td>2 Personal Services</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>3 Annual Increment</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>4 Current Expenses</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>5 Repairs and Alterations</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>6 Equipment</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>7 Program Improvements</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>8 Unclassified</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>9 Total</td>
<td>$</td>
<td>5,371,235</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Acct. No. 3360</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td>$</td>
<td>220,339</td>
</tr>
<tr>
<td>2 Personal Services</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>Acct. No. 3500</td>
<td>Unclassified</td>
<td>$1,091,416</td>
</tr>
<tr>
<td>---------------</td>
<td>--------------</td>
<td>------------</td>
</tr>
<tr>
<td>Acct. No. 3510</td>
<td>Unclassified</td>
<td>$806,140</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 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.
| 8 | Arts and Humanities Fund—                                      |
| 9 | Grants and Contractual Services .......................... 0 0 |
| 10 | Department Programming Funds ................................ 0 |
| 11 | Outreach and Education ........................................ 0 0 |
| 12 | Technical Assistance .......................................... 0 0 |
| 13 | Cultural Center Programs ..................................... 0 0 |
| 14 | Historical Preservation ...................................... 0 0 |
| 15 | Washington Carver Camp ....................................... 0 0 |
| 16 | Grants, Fairs and Festivals .................................. 0 0 |
| 17 | Independence Hall .............................................. 0 0 |
| 18 | Total .......................................................... 806,140 3,992,865 |

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

Any unexpended balance remaining in the appropriation for Washington Carver Camp (account no. 3510-05) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

The Unclassified appropriation includes funding for the Arts and Humanities Fund (account nos. 3515-00, 01, 05), Department Programming Funds (account nos. 3520-06, 07, 08), Grants, Fairs and Festivals (account no. 3510-04) and Washington Carver Camp (account no. 3510-05) and shall be expended only upon authorization of the department of culture and history and in accordance with the provisions of chapter five-a and article three, chapter twelve of the code.
All federal moneys received as reimbursement to the department of culture and history for moneys expended from the general revenue fund for the Arts and Humanities Fund and Historical Preservation are hereby reappropriated for the purposes as originally made, including personal services, current expenses and equipment.

**CORRECTIONS**

43—Probation and Parole Board
(WV Code Chapter 62)
Acct. No. 3650

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries of Members</td>
<td>$81,000*</td>
</tr>
<tr>
<td>of Probation and Parole</td>
<td>$48,700</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$ -0-</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$ -0-</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ -0-</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$ -0-</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$ -0-</td>
</tr>
<tr>
<td>Equipment</td>
<td>$ -0-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$129,700</strong></td>
</tr>
</tbody>
</table>

*Three members at $27,000 per annum each

44—Department of Corrections—Central Office
(WV Code Chapters 25, 28, 29 and 62)
Acct. No. 3680

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$632,675*</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$ -0-</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ -0-</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$ -0-</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$ -0-</td>
</tr>
<tr>
<td>Equipment</td>
<td>$ -0-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$632,675</strong></td>
</tr>
</tbody>
</table>

*Includes salary of the commisioner at $36,500 per annum
Any unexpended balances remaining in the appropriations for Capital Outlay (account no. 3770-04) and Pruntytown Facility—Unclassified (account no. 3770-07) at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

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 period. Such report shall include the total of expenditures made for personal services, annual increment, current expenses (inmate medical expenses and other), repairs and alterations and equipment.
HEALTH AND HUMAN SERVICES

46—State Department of Health—
Central Office

(WV Code Chapter 16)

Acct. No. 4000

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$5,756,325*</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$132,848</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$4,482,499</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>$4,000</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$166,915</td>
</tr>
<tr>
<td>6 Special Olympics</td>
<td>$28,000</td>
</tr>
<tr>
<td>7 State Aid to Local Agencies</td>
<td>$0</td>
</tr>
<tr>
<td>8 Grants to Counties</td>
<td>$0</td>
</tr>
<tr>
<td>9 and EMS Entities</td>
<td>$0</td>
</tr>
<tr>
<td>10 Maternal and Child</td>
<td></td>
</tr>
<tr>
<td>11 Health Clinics, Clinicians and Medical Contracts</td>
<td></td>
</tr>
<tr>
<td>12 and Fees</td>
<td>$0</td>
</tr>
<tr>
<td>13 Foster Grandparents</td>
<td></td>
</tr>
<tr>
<td>14 Stipends/Travel</td>
<td>$62,370</td>
</tr>
<tr>
<td>15 Hemophiliac Assistance</td>
<td></td>
</tr>
<tr>
<td>16 Program</td>
<td>$132,412</td>
</tr>
<tr>
<td>17 Annual Increment</td>
<td>$760</td>
</tr>
<tr>
<td>18 Poison Control Hot Line</td>
<td>$150,000</td>
</tr>
<tr>
<td>19 Primary Care Contracts to Community Health Centers</td>
<td>$0</td>
</tr>
<tr>
<td>20 Agent Orange</td>
<td>$0</td>
</tr>
<tr>
<td>21 Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>22 Corporate Nonprofit</td>
<td></td>
</tr>
<tr>
<td>23 F.M.H.A. Mortgage</td>
<td>$105,913</td>
</tr>
<tr>
<td>24 Finance</td>
<td>$0</td>
</tr>
<tr>
<td>25 Epidemiology Research</td>
<td>$0</td>
</tr>
<tr>
<td>26 Total</td>
<td>$11,022,042</td>
</tr>
</tbody>
</table>

*Includes salary of the director at $54,500 per annum
Any unexpended balances remaining in the appropriations for Placement Programs for the Developmentally Disabled (account no. 4000-13), Agent Orange (account no. 4000-17) and Reimbursement to Community Mental Health and Mental Retardation Centers (account no. 4201-18) at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

**47—Department of Veterans' Affairs—Veterans' Home**

(WV Code Chapter 9A)

Acct. No. 4010

<table>
<thead>
<tr>
<th>Item</th>
<th>Unclassified</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Current Expenses</th>
<th>Repairs and Alterations</th>
<th>Equipment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$516,400</td>
<td>$960,729</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$960,729</td>
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<tr>
<td>Personal Services</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Equipment</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>$516,400</td>
<td>$960,729</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$960,729</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Repairs and Alterations (account no. 4010-02) and Equipment (account no. 4010-03) at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

**48—Resource Recovery—Solid Waste Disposal Authority**

(WV Code Chapter 16)

Acct. No. 4020

<table>
<thead>
<tr>
<th>Item</th>
<th>Unclassified</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Current Expenses</th>
<th>Equipment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$103,158</td>
</tr>
<tr>
<td>Personal Services</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Equipment</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>Total</td>
<td>$103,158</td>
<td>$103,158</td>
<td>-</td>
<td>-</td>
<td>-0-</td>
<td>$103,158</td>
</tr>
</tbody>
</table>
### State Appropriations

#### 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>Unclassified</td>
<td>$703,177*</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>Educational Opportunities for Children of War Veterans</td>
<td>$0</td>
</tr>
<tr>
<td>In Aid of Veterans Day</td>
<td>$0</td>
</tr>
<tr>
<td>Patriotic Exercises</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$703,177</td>
</tr>
</tbody>
</table>

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

#### 50—Department of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$66,303,910*</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$0</td>
</tr>
<tr>
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<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$0</td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>Assistance Payments</td>
<td>$0</td>
</tr>
<tr>
<td>Social Security</td>
<td>$0</td>
</tr>
<tr>
<td>Matching Fund</td>
<td>$0</td>
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<tr>
<td>Indigent Burials</td>
<td>$0</td>
</tr>
<tr>
<td>Social Services</td>
<td>$0</td>
</tr>
<tr>
<td>Emergency Assistance</td>
<td>$0</td>
</tr>
<tr>
<td>TRIP Industry Assistance</td>
<td>$0</td>
</tr>
<tr>
<td>Food Stamps (Value)</td>
<td>$160,000,000†</td>
</tr>
<tr>
<td>Government Donated Food</td>
<td>$26,000,000†</td>
</tr>
<tr>
<td>Public Employees</td>
<td>$0</td>
</tr>
<tr>
<td>Retirement Matching</td>
<td>$0</td>
</tr>
<tr>
<td>Account</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>19</td>
<td>Public Employees</td>
</tr>
<tr>
<td>20</td>
<td>Health Insurance</td>
</tr>
<tr>
<td>21</td>
<td>Child Support Enforcement</td>
</tr>
<tr>
<td>22</td>
<td>Personal Services</td>
</tr>
<tr>
<td>23</td>
<td>Total</td>
</tr>
</tbody>
</table>

*Includes salary of the commissioner at $45,500 per annum
†For information only—not included in total

51—State Commission on Aging
(WV Code Chapter 29)

Acct. No. 4060

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$9,950,139</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>6</td>
<td>Programs for Elderly</td>
<td>$0</td>
</tr>
<tr>
<td>7</td>
<td>Pass Through Programs</td>
<td>$0</td>
</tr>
<tr>
<td>8</td>
<td>Nutrition Program</td>
<td>$0</td>
</tr>
<tr>
<td>9</td>
<td>In-Home Service Program</td>
<td>$0</td>
</tr>
<tr>
<td>10</td>
<td>Public Transportation</td>
<td>$0</td>
</tr>
<tr>
<td>11</td>
<td>Golden Mountaineer</td>
<td>$0</td>
</tr>
<tr>
<td>12</td>
<td>Legislature</td>
<td>$0</td>
</tr>
<tr>
<td>13</td>
<td>Silver Haired</td>
<td>$0</td>
</tr>
</tbody>
</table>

Ch. 122] STATE APPROPRIATIONS 643
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>To Local Entities</td>
<td>$0</td>
</tr>
<tr>
<td>13</td>
<td>Senior Citizen Centers—Land</td>
<td>$0</td>
</tr>
<tr>
<td>14</td>
<td>Acquisition, Construction, Repairs and</td>
<td>$0</td>
</tr>
<tr>
<td>15</td>
<td>Alterations</td>
<td>$0</td>
</tr>
<tr>
<td>19</td>
<td>Total</td>
<td>$9,950,139</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Senior Citizen Centers—Land Acquisition, Const./R and A (account no. 4060-10) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

52—State Department of Health—Medical Facilities (Control)

(WV Code Chapter 16)

Acct. No. 4180

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

Additional funds have been appropriated in account no. 8500 for operation of the medical facilities.

53—Consolidated Medical Services Fund

Acct. No. 4190

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Medical Services Program</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Institutional Facilities</td>
<td>$44,571,023</td>
</tr>
<tr>
<td>3</td>
<td>Operations</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>Item</td>
<td>Amount</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>Reimbursement to Community Mental Health &amp; Mental Retardation Centers</td>
<td>20,283,932</td>
<td></td>
</tr>
<tr>
<td>Reimbursement to Community Behavioral Health Programs for Social Services</td>
<td>1,532,950</td>
<td></td>
</tr>
<tr>
<td>MH/MR Special Projects</td>
<td>1,900,000</td>
<td></td>
</tr>
<tr>
<td>State Aid to Local Agencies</td>
<td>6,527,898</td>
<td></td>
</tr>
<tr>
<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Placement Programs for the Developmentally Disabled</td>
<td>3,842,750</td>
<td></td>
</tr>
<tr>
<td>Primary Care Contracts to Community Health Centers</td>
<td>2,705,587</td>
<td></td>
</tr>
<tr>
<td>Agent Orange</td>
<td>206,517</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>486</td>
<td></td>
</tr>
<tr>
<td>Alcohol, Drug Abuse and DD</td>
<td>2,846,200</td>
<td></td>
</tr>
<tr>
<td>Epidemiology Research</td>
<td>263,036</td>
<td></td>
</tr>
<tr>
<td>Grants to Counties and EMS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entities</td>
<td>1,790,000</td>
<td></td>
</tr>
<tr>
<td>Behavioral Health Program</td>
<td>1,277,000</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>23,062,954</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$201,165,818</td>
<td></td>
</tr>
</tbody>
</table>

For the purpose of maximizing the amount of federal funds receivable in the area of health care programs and their use in related health oriented activities, functions and for related facilities by state spending units, which purpose is legislatively recognized as a paramount and overriding consideration, this new Consolidated Medical Services Fund is hereby budgetarily established and provided, together with direction for the undertaking and authorized authority of the director of the department of health; and as the same was conceptually developed at this regular session for such purpose and for providing maximum flexibility towards such result;
provided that the separate items will nevertheless
control and govern such appropriations.

Into this special account and fund, established in the
state treasury, shall be placed, either by initial deposit
or by transfer, state appropriations received and so
useable; federal funds received and so useable; third
party payee amounts received by the department of
health or donor receipts or grants so useable; with
deposits and transfers to or payments from this fund to
occur as determined as necessary by such authority,
notwithstanding any present or prior provision or
restraint outstanding or impeding to the contrary.

Balances in this fund, including any accrued interest
amounts, shall not expire or revert elsewhere at the
close of the fiscal year, but shall remain for subsequent
appropriation.

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.

Additional funds have been appropriated in account
no. 8500 for operation of the medical facilities.

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

Acct. No. 4405

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$26,993,290</td>
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<tr>
<td>Annual Increment</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>-0-</td>
<td>-</td>
</tr>
</tbody>
</table>
### BUSINESS AND INDUSTRIAL RELATIONS

**55—Department of Labor**

(WV Code Chapters 21 and 47)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>4500</td>
<td>Unclassified</td>
<td>$304,873</td>
<td>$1,137,068*</td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Repairs and Alterations</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Equipment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$304,873</td>
<td>$1,137,068*</td>
</tr>
</tbody>
</table>

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

**56—Department of Commerce**

(WV Code Chapter 5B)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>4625</td>
<td>Unclassified</td>
<td>—</td>
<td>$8,024,122*</td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Repairs and Alterations</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Equipment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>State Parks—Capital Outlay</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>—</td>
<td>$8,024,122</td>
</tr>
</tbody>
</table>

*Includes salary of the director at $65,000 per annum
Any unexpended balances remaining in the appropriations 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 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

Any revenue derived from mineral extraction at any state park shall be deposited in a 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

1 West Virginia's Contribution to the Interstate Commission on Potomac River Basin—Total $20,300

58—Ohio River Valley Water Sanitation Commission
(WV Code Chapter 29)
Acct. No. 4740

1 West Virginia's Contribution to the Ohio River Valley Water Sanitation Commission—Total $56,681

59—West Virginia Air Pollution Control Commission
(WV Code Chapter 16)
Acct. No. 4760

1 Unclassified $1,244,159 $806,245
2 Personal Services —0— —0—
3 Annual Increment —0— —0—
4 Current Expenses —0— —0—
5 Equipment ........................................... $ 0 $ 0
6 Total ........................................... $ 1,244,159 $ 806,245

60—Department of Energy
(WV Code Chapter 22)
Acct. No. 4775

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unclassified</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Current Expenses</th>
<th>Repairs and Alterations</th>
<th>Equipment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$ 32,311,985</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 32,311,985</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
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<tr>
<td>7</td>
<td>Total</td>
<td>$ 32,311,985</td>
<td>$ 0</td>
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<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 32,311,985</td>
</tr>
</tbody>
</table>

*Includes salaries of the commissioner at $65,000 per annum and 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</th>
<th>Description</th>
<th>Unclassified</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Current Expenses</th>
<th>Equipment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 5,500</td>
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</table>

62—West Virginia Nonintoxicating Beer Commissioner
(WV Code Chapter 11)
Acct. No. 4900

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unclassified</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Current Expenses</th>
<th>Equipment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 352,220*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 0</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 352,220</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Includes salary of the commissioner at $30,500 per annum
### 63—West Virginia Racing Commission

(WV Code Chapter 19)

Acct. No. 4950

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$1,077,134</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td>$1,077,134</td>
</tr>
</tbody>
</table>

### AGRICULTURE

64—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 5100

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$46,800</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$921,242</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>Multiflora Rose Program</td>
<td>$0</td>
</tr>
<tr>
<td>Forestry Division</td>
<td>$0</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$0</td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td>$3,243,447</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.

65—Farm Management Commission

(WV Code Chapter 19)

Acct. No. 5110

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$1,600,000</td>
</tr>
</tbody>
</table>

66—Department of Agriculture—Soil Conservation Committee

(WV Code Chapter 19)

Acct. No. 5120

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$836,227</td>
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<tr>
<td>Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Watershed Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td>$836,227</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Watershed Program (account no. 5120-06) and Mud River Flood Control Project (account no. 5120-07) at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

67—Department of Agriculture—Division of Rural Resources

(Matching Fund)

(WV Code Chapter 19)

Acct. No. 5130

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$899,190</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$0</td>
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<tr>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td>$899,190</td>
</tr>
</tbody>
</table>
Any part or all of this appropriation from general revenue may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

### 68—Department of Agriculture—Meat Inspection

(WV Code Chapter 19)

Acct. No. 5140

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$768,666</td>
<td>$465,862</td>
<td></td>
</tr>
<tr>
<td>Personal Services</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$768,666</td>
<td>$465,862</td>
<td></td>
</tr>
</tbody>
</table>

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

### 69—Department of Agriculture—Agricultural Awards

(WV Code Chapter 19)

Acct. No. 5150

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Awards</td>
<td>$—</td>
<td>$70,000</td>
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</tr>
<tr>
<td>Fairs and Festivals</td>
<td>—</td>
<td>$200,450</td>
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<tr>
<td>Total</td>
<td>$—</td>
<td>$270,450</td>
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</tr>
</tbody>
</table>

### 70—Department of Agriculture Forestry Division

(WV Code Chapter 19)

Acct. No. 5160

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$342,900</td>
<td>$2,141,010*</td>
<td></td>
</tr>
</tbody>
</table>
2 Cooperative Forest
3 Resource Study ............. $178,000
4 Total ..................... $342,900 $2,319,010

*Includes salary of the director at $45,000 per annum.

Out of the above general revenue funds, a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

**CONSERVATION AND DEVELOPMENT**

**71—Geological and Economic Survey**

(WV Code Chapter 29)

Acct. No. 5200

<table>
<thead>
<tr>
<th>Item</th>
<th>Budget Year 1</th>
<th>Budget Year 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
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<td>$1,571,033</td>
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<tr>
<td>Personal Services</td>
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<td>$0</td>
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<tr>
<td>Annual Increment</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>Current Expenses</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Special Studies</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>To Secure Federal and Other Contracts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Contracts</td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

10 Total ................................ $214,083 $1,571,033

Any unexpended balance remaining in the appropriation To Secure Federal and Other Contracts (account no. 5200-07) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

The Unclassified appropriation includes funding To Secure Federal and Other Contracts and may be transferred to a special revenue account for the purpose of providing advance funding for such contracts.

**72—Water Resources Board**

(WV Code Chapter 20)

Acct. No. 5640

1 Unclassified ........................... $92,504
### 73—Department of Natural Resources
(WV Code Chapter 20)

Acct. No. 5650

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$8,900,642</td>
<td>$4,126,658*</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$8,900,642</td>
<td>$4,126,658*</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>Account</th>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>—</td>
<td>$389,091</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>—</td>
<td>$389,091</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Blennerhassett Island (account no. 5660-07) and in the item in this account designated Unclassified, at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

75—Water Development Authority
(WV Code Chapter 20)
Acct. No. 5670

Any unexpended balances remaining in the appropriations for 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) and Capital Outlay — Sewer (account no. 5670-20) at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

76—West Virginia Railroad Maintenance Authority
(WV Code Chapter 29)
Acct. No. 5690

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$225,000</td>
<td>$697,759</td>
</tr>
<tr>
<td>Personal Services</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>B and O Commuter Service</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>Total</td>
<td>$225,000</td>
<td>$697,759</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Repairs and Alterations (account no. 5690-02) and Unclassified (account no. 5690-06) at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.
### PROTECTION

#### 77—Department of Public Safety

(WV Code Chapter 15)

Acct. No. 5700

<table>
<thead>
<tr>
<th>Item</th>
<th>Unclassified</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>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$348,926</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$348,926</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$24,458,710</td>
</tr>
</tbody>
</table>

*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>Unclassified</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Current Expenses</th>
<th>Repairs and Alterations</th>
<th>Equipment</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>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$840,299</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$840,299</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$3,886,094</td>
</tr>
</tbody>
</table>

*Includes salary of the adjutant general at $34,000 per annum
BOARDS AND COMMISSIONS

79—West Virginia Civil Service System

(WV Code Chapter 29)

Acct. No. 5840

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$1,059,422*</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>6</td>
<td>Applicant Services</td>
<td>$0</td>
</tr>
<tr>
<td>7</td>
<td>Hearing Examiner</td>
<td>$0</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$1,059,422</td>
</tr>
</tbody>
</table>

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

9 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 the general revenue fund for a prorata share of the administrative cost based on the relationship between the quarterly-average number of employees in the service of such department, commission, board or agency and the quarterly-average number of employees in the service of all the departments, commissions, boards and agencies of the state for the appropriate calendar quarter.

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

80—West Virginia Public Legal Services Council

(WV Code Chapter 29)

Acct. No. 5900

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$3,504,104</td>
</tr>
<tr>
<td>2</td>
<td>Council and Central Office</td>
<td>$0</td>
</tr>
</tbody>
</table>
### State Appropriations

<table>
<thead>
<tr>
<th>Item Description</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>—0-</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>—</td>
<td>—0-</td>
</tr>
<tr>
<td>Appointed Counsel Fees</td>
<td>—</td>
<td>—0-</td>
</tr>
<tr>
<td>Public Defender Operations</td>
<td>—</td>
<td>—0-</td>
</tr>
<tr>
<td>Criminal Law Research</td>
<td>—</td>
<td>—0-</td>
</tr>
<tr>
<td>Appellate Division</td>
<td>—</td>
<td>—0-</td>
</tr>
<tr>
<td>Total</td>
<td>—</td>
<td>$3,504,104</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Appointed Counsel Fees (account no. 5900-11) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

#### 81—Human Rights Commission

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Account No. 5980</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
</tr>
<tr>
<td>Personal Services</td>
</tr>
<tr>
<td>Annual Increment</td>
</tr>
<tr>
<td>Current Expenses</td>
</tr>
<tr>
<td>Equipment</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

#### 82—Women’s Commission

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Account No. 6000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
</tr>
<tr>
<td>Personal Services</td>
</tr>
<tr>
<td>Annual Increment</td>
</tr>
<tr>
<td>Current Expenses</td>
</tr>
<tr>
<td>Equipment</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

#### 83—Education Employees Grievance Board

(WV Code Chapter 18)

<table>
<thead>
<tr>
<th>Account No. 6015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$282,977</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$282,977</td>
</tr>
</tbody>
</table>

**84—West Virginia Public Employees Retirement Board**

*(WV Code Chapter 5)*

Acct. No. 6140

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Employer's Accumulation</td>
<td>$7,544,677</td>
</tr>
<tr>
<td>2</td>
<td>Expense Fund</td>
<td>$0</td>
</tr>
<tr>
<td>3</td>
<td>Supplemental Benefits for Annuitants</td>
<td>$2,232,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$9,776,677</td>
</tr>
</tbody>
</table>

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 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 balances in the various special revenue funds in excess of specific appropriations.

**85—West Virginia Public Employees Insurance Board**

*(WV Code Chapter 5)*

Acct. No. 6150

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$65,325,167</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$0</td>
</tr>
</tbody>
</table>
Public Employees Health
Insurance State Contributions ... — 0—
Total $ 65,325,167

Any unexpended balance remaining in the appropriation Public Employees Health Insurance State Contributions (account no. 6150-06) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

The Unclassified appropriation includes funding to cover the state's share of public employees health insurance costs for those spending units operating from the general revenue fund. The 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.

86—Insurance Commissioner
(WV Code Chapter 33)
Acct. No. 6160

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$351,694*</td>
</tr>
<tr>
<td>Personal Services</td>
<td>—0—</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—0—</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>—0—</td>
</tr>
<tr>
<td>Equipment</td>
<td>—0—</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$351,694</td>
</tr>
</tbody>
</table>

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

87—State Fire Commission
(WV Code Chapter 29)
Acct. No. 6170

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$813,300</td>
</tr>
</tbody>
</table>
2 Personal Services ............ — 0
3 Annual Increment ............ — 0
4 Current Expenses ............ — 0
5 Repairs and Alterations ..... — 0
6 Equipment ................... — 0
7 Total ................... $813,300

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

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

Any unexpended balances remaining for federal funds at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

88—West Virginia Department of Highways
(WV Code Chapters 17 and 17C)
Acct. No. 6700
TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>1987-88</td>
<td>1987-88</td>
</tr>
</tbody>
</table>

1 Maintenance, Expressway, $55,000,000
2 Trunkline and Feeder....$ 55,000,000
<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance, State Local Services</td>
<td>$77,062,000</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and Secondary Roads</td>
<td>$15,500,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Toll Road Examination</td>
<td>$500,000</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>$16,105,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>$23,821,000*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$225,000</td>
</tr>
<tr>
<td>Debt Service</td>
<td>$80,900,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>$112,481,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>$186,514,000</td>
</tr>
<tr>
<td>Appalachian Program</td>
<td>$36,817,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>$5,358,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$611,783,000</strong></td>
</tr>
</tbody>
</table>

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

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

The 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 sections seventeen and eighteen, article two, chapter fourteen, of the code.

Funds appropriated on line 12, Annual Increment, shall be transferred to line 11, General Operations, only as required.
### 89—Department of Motor Vehicles

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

**Acct. No. 6710**

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified</th>
<th>$</th>
<th>6,211,371*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>6</td>
<td>Purchase of License Plates</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>7</td>
<td>Social Security Matching</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>8</td>
<td>Public Employees</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>9</td>
<td>Retirement</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>10</td>
<td>Matching</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>11</td>
<td>Public Employees</td>
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<td>—0—</td>
</tr>
<tr>
<td>12</td>
<td>Health Insurance</td>
<td>—</td>
<td>—0—</td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td>$</td>
<td>6,211,371</td>
</tr>
</tbody>
</table>

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

### 90—State Department of Education—Veterans' Education

(WV Code Chapter 18)

**Acct. No. 7979**

**TO BE PAID FROM FEDERAL FUNDS**

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified</th>
<th>$130,413</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—0—</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—0—</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>—0—</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>—0—</td>
<td>—</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$130,413</td>
<td>$</td>
</tr>
</tbody>
</table>

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

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)
Acct. No. 8000

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$168,700</td>
<td></td>
</tr>
<tr>
<td>Personal Services</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$168,700</strong></td>
<td></td>
</tr>
</tbody>
</table>

92—Real Estate Commission

(WV Code Chapter 47)
Acct. No. 8010

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$231,914</td>
<td></td>
</tr>
<tr>
<td>Personal Services</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$231,914</strong></td>
<td></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid out of collections of license fees as provided by law.

93—Insurance Commissioner

(WV Code Chapter 33)
Acct. No. 8016

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$1,000,000</td>
<td></td>
</tr>
</tbody>
</table>
2 The total amount of this appropriation shall be paid from a special revenue fund out of collections of fees and charges as provided by law.

94—Regional Jail and Prison Authority
(WV Code Chapter 31)
Acct. No. 8051

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$392,042</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$0</td>
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<tr>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$0</td>
</tr>
<tr>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$392,042</strong></td>
</tr>
</tbody>
</table>

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

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

2 The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

5 No expenditures shall be made from this account 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

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

2 The total amount of this appropriation shall be paid from the special revenue fund out of collections of fees and charges as provided by law.
The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by law.

97—State Board of Education—Rehabilitation Division—West Virginia Rehabilitation Center—Special Account
(WV Code Chapter 18)
Acct. No. 8137
TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total $ 600,000

The total amount of this appropriation shall be paid from special revenue funds out of receipts collected pursuant to section six-a, article ten-a, chapter eighteen of the code.

98—Department of Finance and Administration—Division of Purchasing—Revolving Fund
(WV Code Chapter 5A)
Acct. No. 8140
TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified $ 1,364,950
2 Personal Services — $ 0
3 Annual Increment — $ 0
4 Current Expenses — $ 0
5 Equipment — $ 0
6 Social Security Matching — $ 0
7 Public Employees
8 Retirement Matching — $ 0
9 Public Employees
10 Health Insurance — $ 0
11 Total $ 1,364,950

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

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

99—Department of Finance and Administration—
Information Systems Services 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>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$</td>
<td>$ 7,699,542</td>
</tr>
<tr>
<td>Personal Services</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Equipment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Public Employees</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Retirement Matching</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Health Insurance</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$</td>
<td>$ 7,699,542</td>
</tr>
</tbody>
</table>

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

100—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>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$</td>
<td>$ 597,109</td>
</tr>
<tr>
<td>Personal Services</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Public Employees</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Retirement Matching</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Health Insurance</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$</td>
<td>$ 597,109</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the department of agriculture as provided by law.

**101—General John McCausland Memorial Farm**  
*(WV Code Chapter 19)*  
Acct. No. 8194  
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$80,000</td>
</tr>
</tbody>
</table>

Funds for the above appropriation shall be expended in accordance with article twenty-six, chapter nineteen of the code.

**102—Board of Barbers and Beauticians**  
*(WV Code Chapters 16 and 30)*  
Acct. No. 8220  
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$259,053</td>
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<tr>
<td>Personal Services</td>
<td>$259,053</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$259,053</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$259,053</td>
</tr>
<tr>
<td>Equipment</td>
<td>$259,053</td>
</tr>
<tr>
<td>Total</td>
<td>$259,053</td>
</tr>
</tbody>
</table>

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

**103—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>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$83,705</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$5,476,457*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$5,476,457*</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$5,476,457*</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$5,476,457*</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,476,457*</td>
</tr>
<tr>
<td>Total</td>
<td>$5,476,457*</td>
</tr>
</tbody>
</table>
7 Social Security Matching ... |   | -0-
8 Public Employees |   | -0-
9 Retirement Matching ...... |   | -0-
10 Public Employees |   | -0-
11 Health Insurance ........ |   | -0-
12 Headquarters Building |   | -0-
13 County |   | -0-
14 Plans .................. |   | -0-
15 Total .................. | $ 83,705 | $ 5,476,457

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

Any unexpended balance remaining in the appropriation for Headquarters Building Development (account no. 8280-10) at the close of the fiscal year 1986-87 is hereby reappropriated for expenditure during the fiscal year 1987-88.

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

104—Public Service Commission—
Gas Pipeline Division
(WV Code Chapter 24B)
Acct. No. 8285
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Unclassified</th>
<th>$ 47,913</th>
<th>$ 226,347*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>-0-</td>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching ...</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees</td>
<td></td>
<td>-0-</td>
</tr>
<tr>
<td>7</td>
<td>Retirement Matching ......</td>
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<tr>
<td>8</td>
<td>Public Employees</td>
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<td>-0-</td>
</tr>
<tr>
<td>9</td>
<td>Health Insurance ........</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>10</td>
<td>Total ...............</td>
<td>$ 47,913</td>
<td>$ 226,347</td>
</tr>
</tbody>
</table>

*Includes salaries of three members at $1,500 each per annum.
12 The total amount of this appropriation shall be paid from a 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 as provided by law.

105—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>Description</th>
<th>Unclassified</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Current Expenses</th>
<th>Equipment</th>
<th>Social Security Matching</th>
<th>Public Employees</th>
<th>Retirement Matching</th>
<th>Health Insurance</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$392,196</td>
<td>$1,708,490*</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>$392,196</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>$1,708,490</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
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</tr>
<tr>
<td>7</td>
<td>Public Employees</td>
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<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>8</td>
<td>Retirement Matching</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
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</tr>
<tr>
<td>9</td>
<td>Public Employees</td>
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<td>-0-</td>
<td>-0-</td>
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<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>10</td>
<td>Health Insurance</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td>$392,196</td>
<td>$1,708,490</td>
<td>$392,196</td>
<td>$1,708,490</td>
<td>$392,196</td>
<td>$1,708,490</td>
<td>$392,196</td>
<td>$1,708,490</td>
<td>$392,196</td>
<td>$392,196</td>
</tr>
</tbody>
</table>

*Includes salaries of three members at $7,900 each per annum

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

106—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>Description</th>
<th>Unclassified</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$-</td>
<td>$660,287</td>
</tr>
</tbody>
</table>
### 107—Department of Natural Resources

(WV Code Chapter 20)

Acct. No. 8300

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$8,193,147</td>
</tr>
<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>Repairs and Alterations</td>
<td>—</td>
</tr>
<tr>
<td>Equipment</td>
<td>—</td>
</tr>
<tr>
<td>Land Purchase and Buildings</td>
<td>—</td>
</tr>
<tr>
<td>Buildings</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$8,193,147</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Land Purchase and Buildings (account no. 8300-09) at the close of the fiscal year 1986-87 and available for capital improvement and land purchase purposes is hereby reappropriated for expenditure in the fiscal year 1987-88, all in accordance with section thirty-four, article two, chapter twenty of the code.

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the public service commission.
from a special revenue fund out of fees collected by the
deption of natural resources. Expenditures shall be
limited to the amounts appropriated except for federal
funds received and special funds collected.

108—West Virginia Hospital
Finance Authority
(WV Code Chapter 16)
Acct. No. 8330

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Unclassified</th>
<th>$</th>
<th>$ 120,127</th>
</tr>
</thead>
</table>

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

Special funds in excess of the amount herein appropriated may be made available by budget amendment upon request of the commissioner of finance and administration and the approval of the governor.

109—Department of Public Safety—Inspection Fees
(WV Code Chapter 15)
Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Unclassified</th>
<th>$</th>
<th>$ 664,002</th>
</tr>
</thead>
</table>

| Personal Services | $   | 0- |
| Annual Increment  | $   | 0- |
| Current Expenses  | $   | 0- |
| Repairs and Alterations | $ | 0- |
| Equipment         | $   | 0- |

| Total            | $   | $ 664,002 |

The total amount of this appropriation shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.
110—Department of Public Safety—
Drunk Driving Prevention Fund
(WV Code Chapter 15)
Acct. No. 8355

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td>$600,000</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$600,000</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the special revenue fund 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.

111—Department of Banking
(WV Code Chapter 31A)
Acct. No. 8395

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td>$1,208,554*</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,208,554</td>
</tr>
</tbody>
</table>

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

112—Crime Victims Compensation Fund
(WV Code Chapter 14)
Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td>$500,000</td>
</tr>
<tr>
<td>2 Personal Services</td>
<td>$172,592</td>
</tr>
</tbody>
</table>

*Includes salary of the commissioner at $36,500 per annum
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$34,900,000</td>
</tr>
<tr>
<td>2</td>
<td>Administrative</td>
<td>$0</td>
</tr>
<tr>
<td>3</td>
<td>Mental Health</td>
<td>$0</td>
</tr>
<tr>
<td>4</td>
<td>Facility Projects</td>
<td>$0</td>
</tr>
<tr>
<td>5</td>
<td>Capital Outlay</td>
<td>$0</td>
</tr>
<tr>
<td>6</td>
<td>and Renovations</td>
<td>$0</td>
</tr>
<tr>
<td>7</td>
<td>Administrative Services</td>
<td>$0</td>
</tr>
<tr>
<td>8</td>
<td>Capital</td>
<td>$0</td>
</tr>
<tr>
<td>9</td>
<td>Outlay for</td>
<td>$0</td>
</tr>
<tr>
<td>10</td>
<td>Computer Hardware,</td>
<td>$0</td>
</tr>
<tr>
<td>11</td>
<td>Software and</td>
<td>$0</td>
</tr>
<tr>
<td>12</td>
<td>Miscellaneous</td>
<td>$0</td>
</tr>
<tr>
<td>13</td>
<td>Emergency Services and</td>
<td>$0</td>
</tr>
<tr>
<td>14</td>
<td>Miscellaneous</td>
<td>$0</td>
</tr>
<tr>
<td>15</td>
<td>Andrew S. Rowan—Capital</td>
<td>$0</td>
</tr>
<tr>
<td>16</td>
<td>Outlay and Renovations for</td>
<td>$0</td>
</tr>
<tr>
<td>17</td>
<td>Certification, Life</td>
<td>$0</td>
</tr>
<tr>
<td>18</td>
<td>Safety and</td>
<td>$0</td>
</tr>
<tr>
<td>19</td>
<td>Energy Conservation</td>
<td>$0</td>
</tr>
<tr>
<td>20</td>
<td>Colin Anderson Center—</td>
<td>$0</td>
</tr>
<tr>
<td>21</td>
<td>Capital Outlay and</td>
<td>$0</td>
</tr>
<tr>
<td>22</td>
<td>Renovations</td>
<td>$0</td>
</tr>
</tbody>
</table>

These funds are intended to be expended for court costs and administrative costs and federal reimbursement for compensation paid to crime victims.

113—State Department of Health—
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>Chapter</th>
<th>State Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>23-24</td>
<td>for Certification, Life Safety and Energy</td>
</tr>
<tr>
<td>25-26</td>
<td>Conservation ...........</td>
</tr>
<tr>
<td>27</td>
<td>Denmar Hospital—Capital Outlay and Renovations for Certification, Life Safety and Energy Conservation — 0</td>
</tr>
<tr>
<td>28</td>
<td>Marion Hospital—Capital Outlay and Renovations for Certification, Life Safety and Energy Conservation — 0</td>
</tr>
<tr>
<td>29-30</td>
<td>Hopemont Hospital—Capital Outlay and Renovations for Certification, Life Safety and Energy Conservation — 0</td>
</tr>
<tr>
<td>31</td>
<td>Huntington Hospital—Capital Outlay and Renovations for Certification, Life Safety and Energy Conservation — 0</td>
</tr>
<tr>
<td>32-33</td>
<td>Lakin Hospital—Capital Outlay and Renovations for Certification, Life Safety and Energy Conservation — 0</td>
</tr>
<tr>
<td>34-35</td>
<td>Pinecrest Hospital—Capital Outlay and Renovations for Certification, Life Safety and Energy Conservation — 0</td>
</tr>
<tr>
<td>36-37</td>
<td>Weston Hospital—Capital Outlay and Renovations for Certification, Life Safety and Energy Conservation — 0</td>
</tr>
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</table>

Contingency for Repairs and Alterations, Equipment, Emergency Services and Miscellaneous ............... — 0
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>0</th>
<th>34,900,000</th>
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</thead>
<tbody>
<tr>
<td>65</td>
<td>Energy Conservation</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>66</td>
<td>Greenbrier Center—Capital</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>67</td>
<td>Outlay and Renovations</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>68</td>
<td>for Certification, Life</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>69</td>
<td>Safety and Energy</td>
<td>-</td>
<td>-</td>
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<tr>
<td>70</td>
<td>Conservation</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Bond Payment</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Welch Emergency</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>73</td>
<td>Hospital</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>74</td>
<td>Contingency</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>for Operations</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>76</td>
<td>DD and Chronic</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Mentally Ill</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>78</td>
<td>Group Homes</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>79</td>
<td>Total</td>
<td>$</td>
<td>$ 34,900,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for hospital services revenue account at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

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

From the above appropriation $20,000,000 may be used for medical facilities operations, either in connection with this account or in connection with the item designated Institutional Facilities Operations in the Consolidated Medical Services Fund, account no. 4190.

114—Health Care Cost Review Authority
(WV Code Chapter 16)
Acct. No. 8564

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>0</th>
<th>1,072,356</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$</td>
<td>$ 1,072,356</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Amount</td>
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</tr>
<tr>
<td>---</td>
<td>------------------------------------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$1,072,356</td>
<td></td>
</tr>
</tbody>
</table>

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

**115—Geological and Economic Survey**
(WV Code Chapter 29)

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

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

**116—West Virginia Board of Regents—Special Capital Improvement Fund**
(WV Code Chapter 18)

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

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

**117—West Virginia Board of Regents—State System Registration Fee—Special Capital Improvement Fund**
(Capital Improvement and Bond Retirement Fund)
(WV Code Chapter 18)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ............ $ 2,397,000
Any unexpended balances remaining in prior years' and 1986-87 appropriations are hereby reappropriated for expenditure during the fiscal year 1987-88.

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

In light of the reductions in general revenue funding in the board of regents control account no. 2790 below current year, 1986-87 level of funding, $2,000,000 is hereby made available either from this account and the item designated Capital Improvements or from account no. 8855 and the item therein designated Computer Network System Upgrade (Host and Remote Equipment Software acquisition and upgrade) or partly from each but not to exceed such aforesaid amount in total, for use or transfer and use, as determined necessary by the board of regents.

118—West Virginia 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 1986-87 appropriations are hereby reappropriated for expenditure during the fiscal year 1987-88.
### State Appropriations

**Ch. 122**

119—*West Virginia 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>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$11,160,000</td>
</tr>
<tr>
<td>Marshall University Stadium</td>
<td>11,160,000</td>
</tr>
<tr>
<td>Marshall University Debt Service (Cost $25,000,000)</td>
<td>0</td>
</tr>
<tr>
<td>Building and Campus Renewal</td>
<td>9,000,000</td>
</tr>
<tr>
<td>Instructional Facilities and Equipment</td>
<td>925,000</td>
</tr>
<tr>
<td>Concord College Campus Building Renovation</td>
<td>3,500,000</td>
</tr>
<tr>
<td>Bluefield State College Campus Development (Greenbrier Center)</td>
<td>475,000</td>
</tr>
<tr>
<td>Economic Development Act of 1986 (Equipment for Regional Research and Development in Charleston, Huntington, Morgantown, and Wheeling)</td>
<td>2,100,000</td>
</tr>
</tbody>
</table>
Computer Network System  
Upgrade (Host and Remote Site Equipment Software Acquisition and Upgrade) ........................................ $ 6,000,000

West Virginia University  
Campus Development (Comer Building Construction Supplement) .................................. $ 500,000

Total ........................................................................................................ $ 33,660,000

Any unexpended balances remaining in prior years' and in the 1986-87 appropriations are hereby reappropriated for expenditure during the fiscal year 1987-88, except account number 8855-46 (fiscal year 1986) which shall expire on June 30, 1987.

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

From the appropriation Building and Campus Renewal, $200,000 is intended for repairs and alterations for Jackson's Mill.

In light of the reductions in general revenue funding in the board of regents control account no. 2790 below current year, 1986-87 level of funding, $2,000,000 is hereby made available either from this account and the item designated Computer Network System Upgrade (Host and Remote Site Equipment Software acquisition and upgrade) or from account no. 8835 and the item therein designated Capital Improvements, or partly from each but not to exceed such aforesaid amount in total, for use or transfer and use, as determined necessary by the board of regents.
120—West Virginia Board of Regents—
State System Tuition Fee—
Revenue Bond Construction Fund

(WV Code Chapter 18)
Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

Any unexpended balances remaining in prior years' and in the 1986-87 appropriations are hereby reappropriated for expenditure during the fiscal year 1987-88.

121—Workers' Compensation Commissioner

(WV Code Chapter 23)
Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$8,537,543*</td>
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<tr>
<td>Annual Increment</td>
<td>$130,212</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$5,437,070</td>
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<tr>
<td>Equipment</td>
<td>$247,850</td>
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<tr>
<td>Social Security</td>
<td></td>
</tr>
<tr>
<td>Matching</td>
<td>$619,744</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>Retirement</td>
<td></td>
</tr>
<tr>
<td>Matching</td>
<td>$823,437</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td>$937,662</td>
</tr>
<tr>
<td>Employers' Excess</td>
<td></td>
</tr>
<tr>
<td>Liability Fund</td>
<td>$256,953</td>
</tr>
<tr>
<td>Personal Services</td>
<td></td>
</tr>
<tr>
<td>Annual</td>
<td></td>
</tr>
<tr>
<td>Increment</td>
<td>$468</td>
</tr>
<tr>
<td>Current</td>
<td></td>
</tr>
<tr>
<td>Expenses</td>
<td>$81,869</td>
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<tr>
<td>Equipment</td>
<td>$3,100</td>
</tr>
<tr>
<td>Social Security</td>
<td></td>
</tr>
<tr>
<td>Matching</td>
<td>$9,438</td>
</tr>
</tbody>
</table>
Public Employees Retirement Matching .. 12,541

Public Employees Health Insurance .. 18,000

Total .......... $ 16,990,471

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

There is hereby authorized to be paid out of the above appropriation, the amount necessary for the premiums on bonds given by the treasurer as bond custodian for the protection of the workers’ compensation fund. This sum shall be transferred to the state board of insurance.

122—West Virginia Alcohol Beverage Control Commissioner
(WV Code Chapter 60)

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified ................. $ - $14,945,089*
2 Personal Services ............ - 0-
3 Annual Increment ............ - 0-
4 Current Expenses ............. - 0-
5 Repairs and Alterations ..... - 0-
6 Equipment .................... - 0-
7 Social Security Matching ... - 0-
8 Public Employees Retirement Matching .. - 0-
9 Public Employees Health Insurance .. - 0-

Total ....................... $ - $14,945,089

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

The total amount of this appropriation shall be paid from a special revenue fund out of liquor revenues.
The above appropriation includes the salary of the commissioner, salaries of store personnel, store inspectors, store operating expenses and equipment, and salaries, expenses and equipment of administration offices.

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

123—West Virginia University—
Schools of Health Sciences

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$14,985,077</td>
</tr>
<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>Repairs and Alterations</td>
<td>-</td>
</tr>
<tr>
<td>Equipment</td>
<td>-</td>
</tr>
<tr>
<td>Family Practice Residency</td>
<td>-</td>
</tr>
<tr>
<td>Program</td>
<td>-</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$14,985,077</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capital Outlay (account no. 9280-08) and in the 1986-87 appropriation for the West Virginia University—Medical Center at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

Sec. 5. Awards for claims against the state.—There are hereby appropriated, for the remainder of the fiscal year 1986-87 and to remain in effect until June 30, 1988, from the funds as designated, in the amounts as specified and for the claimants as named in enrolled senate bill no. 441, acts, legislature, regular session, 1987-crime victims compensation fund of $771,025.25 for payment of claims against the state.
There are hereby appropriated for the remainder of the fiscal year 1986-87 and to remain in effect until June 30, 1988, from the funds as designated, in the amounts as specified and for the claimants as named in enrolled senate bill nos. 470 and 509, acts, legislature, regular session, 1987-general revenue funds of $57,635.63, state road funds of $29,431.09, special revenue funds of $37,144.87, workers' compensation funds of $641.96 and federal funds of $2,160.98 for payments of claims against the state.

The total of general revenue funds above does not include payment from the Supreme Court—General Judicial, account no. 1110, specifically made payable from the appropriation for the current fiscal year 1986-87.

Sec. 6. Supplemental and deficiency appropriations.—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-seven to supplement the 1986-87 appropriations, and to be available for expenditure upon date of passage.

Any unexpended balances remaining in the appropriations at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88.

124—Department of Natural Resources  
Acct. No. 5650

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blackfly Control Program</td>
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</tr>
<tr>
<td></td>
<td>$ -</td>
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</table>

125—Department of Corrections—  
Central Office  
Acct. No. 3680

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Female Offenders</td>
<td>$ -</td>
</tr>
<tr>
<td>Contract—</td>
<td>$ -</td>
</tr>
<tr>
<td></td>
<td>$ -</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>$ -</td>
</tr>
<tr>
<td></td>
<td>$ -</td>
</tr>
</tbody>
</table>
126—Department of Corrections—
Correctional Units

Acct. No. 3770

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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<tr>
<td>1</td>
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<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses—</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Inmate Medical Expenses</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$</td>
</tr>
</tbody>
</table>

127—State Department of Education

Acct. No. 2860

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tuition Waiver</td>
<td>$</td>
</tr>
</tbody>
</table>

1 Sec. 7. Reappropriations—revenue sharing trust fund.—Any unexpended balances to appropriations made by the 1974, 1975, 1977, 1979, 1980, 1981, 1982, 1983, 1984, 1985 and 1986 budget acts and any supplementary transfers or redesignations made by the above-listed budget acts from the revenue sharing trust fund at the close of the fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1987-88. The following accounts are to be redesignated as department of highways — Unclassified—Total, account nos. 9705-05, 9705-08, 9705-12, 9772-11, 9781-23 and 9745-20; state health department — Unclassified—Total, account nos. 9710-06, 9710-09, 9715-09, 9715-10 and 9715-15; department of corrections — Unclassified—Total, account no. 9719-06; governor’s office of community and industrial development — Unclassified—Total, account nos. 9720-16, 9721-07, 9721-08 and 9721-09; and water development authority — Unclassified—Total, account no. 9743-07.

From Account no. 9705-05 above, $200,000 shall be used for the repair of the Burnsville Bridge in the Town of Burnsville, Braxton County.

1 Sec. 8. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 1987-88.
### Acct. No. 8029

**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>$216,578</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$1,962</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$178,692</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$20,000</td>
</tr>
<tr>
<td>5</td>
<td>To Local Entities</td>
<td>$13,230,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$13,647,232</td>
</tr>
</tbody>
</table>

### Acct. No. 8030

**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>$1,292,292</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$20,268</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$1,158,849</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$87,400</td>
</tr>
<tr>
<td>5</td>
<td>To Local Entities</td>
<td>$29,628,651</td>
</tr>
<tr>
<td>6</td>
<td>Transfer to State Spending Units</td>
<td>$13,000,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$45,187,460</td>
</tr>
</tbody>
</table>

### Acct. No. 8031

**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>$116,970</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$1,440</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$106,690</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$15,258</td>
</tr>
<tr>
<td>5</td>
<td>To Local Entities</td>
<td>$5,381,754</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$5,622,112</td>
</tr>
</tbody>
</table>
### 131—Office of Community and Industrial Development—Justice Assistance

Acct. No. 8032

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

### 132—State Department of Education—Education Grant

Acct. No. 8242

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>$995,103</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$15,036</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$543,704</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$100</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$9,355</td>
</tr>
<tr>
<td>6</td>
<td>To Local Entities</td>
<td>$38,875,171</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$40,438,469</td>
</tr>
</tbody>
</table>

### 133—State Department of Health—Maternal and Child Health

Acct. No. 8502

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>$744,248</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$10,381</td>
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<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$5,783,712</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>$62,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$6,600,341</td>
</tr>
</tbody>
</table>

### 134—State Department of Health—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>$425,041</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$4,536</td>
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<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$4,831,533</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>$25,917</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$5,287,027</td>
</tr>
</tbody>
</table>
135—State Department of Health—Preventive Health  
Acct. No. 8506  
TO BE PAID FROM FEDERAL FUNDS  

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$370,968</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>3,672</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>1,105,592</td>
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<tr>
<td>4 Equipment</td>
<td>19,340</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,499,572</strong></td>
</tr>
</tbody>
</table>

136—Department of Health—Alcohol and Drug Abuse Treatment and Rehabilitation  
Acct. No. 8510  
TO BE PAID FROM FEDERAL FUNDS  

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>$1,235,544</td>
</tr>
</tbody>
</table>

137—Department of Human Services—Energy Assistance  
Acct. No. 9147  
TO BE PAID FROM FEDERAL FUNDS  

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,275,719</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>46,000</td>
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<tr>
<td>3 Current Expenses</td>
<td>16,761,675</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>0</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>0</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>0</td>
</tr>
<tr>
<td>7 Energy Assistance</td>
<td>0</td>
</tr>
<tr>
<td>8 Social Services</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$18,083,394</strong></td>
</tr>
</tbody>
</table>

138—Department of Human Services—Social Services  
Acct. No. 9161  
TO BE PAID FROM FEDERAL FUNDS  

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$9,889,751</td>
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</tbody>
</table>
### Ch. 122] STATE APPROPRIATIONS 689

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Annual Increment</td>
<td>213,315</td>
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<tr>
<td>Current Expenses</td>
<td>10,823,441</td>
</tr>
<tr>
<td>Equipment</td>
<td>100,000</td>
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<tr>
<td>Social Security Matching</td>
<td>-0-</td>
</tr>
<tr>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>Retirement Matching</td>
<td>-0-</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>-0-</td>
</tr>
<tr>
<td>Social Services</td>
<td>-0-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 21,026,507</strong></td>
</tr>
</tbody>
</table>

Sec. 9. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred eighty-eight, appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve 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 articles two and three, chapter twelve, and article two, chapter five-a of the code, unless the spending unit has filed with the director of the budget, the auditor and the legislative auditor prior to the beginning of each fiscal year:

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

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

Sec. 10. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year one thousand nine hundred eighty-eight, 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 are hereby appropriated all moneys so depos-
ited during the fiscal year one thousand nine hundred eighty-eight, to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 11. Specific funds and collection accounts.—A fund or collection account, which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account, and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 12. Specified funds newly available as part of state fund, general revenue, through budgetary expiration enactments and directed disposition thereof.—Of the money that has been made newly available for appropriation and expenditure through budgetary expiration into the state fund, general revenue of the state, by enactment of enrolled house bill no. 3191 and enrolled house bill no. 3192, in March, 1987 at regular session, and in the total amount of $5,228,232.82 such total amount shall be retained or brought forward by the auditor as follows:

(a) Of such total amount $3,500,000 shall be brought forward to July 1, 1987 for use in connection with providing funding for the appropriations in this budget bill for fiscal year 1987-88; and

(b) The remainder of such total amount, aforesaid, shall be retained and available in respect of general appropriations or any specific appropriation thereof made in connection with current fiscal year 1986-87.

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 municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the 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 municipal bond commission as may be necessary for these purposes.

The 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 the state fund, general revenue, out of funds not otherwise appropriated, to be paid upon requisition of the auditor and/or the governor, as the case may be, a sum sufficient to pay the cost of publication of delinquent corporations as provided by sections eighty-four and eighty-six, article twelve, chapter eleven 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, annual increment, current expenses, repairs and alterations, equipment and capital outlay, where not otherwise specifically provided and except as otherwise provided in Sec. 3, TITLE I.

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 section sixteen, article nine-a, chapter eighteen 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 article two, chapter five-a 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 re appropriations shall be to the succeeding or later spending unit created unless otherwise indicated.

Sec. 2. Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall
be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 123
(S. B. 763—Originating in the Senate Committee on Finance)

[Passed May 13, 1987; in effect July 1, 1987. Vetoed by the Governor. Passed over veto.]

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 accruing interest in the following designated interest accounts or from any principal account, should such interest have been so distributed, earned from July 1, 1987 through June 30, 1988, from 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 Community and Industrial Development, Domestic Violence-Operations, Account No. 8026-221; of the Office of Community and Industrial Development, Domestic Violence-Administration, Account No. 8026-231; of the Office of Community and Industrial Development, Law-Enforcement Training-Operations, Account No. 8026-241; of the Office of Community and Industrial Development, Law-Enforcement Training-Administration, Account No. 8026-251; of the Office of Community and Industrial 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 Account-
tancy, Account No. 8100-05I; of the West Virginia Board of Dental Examiners, Account No. 8102-15I; of the West Virginia Board of Land Surveyors, Account No. 8103-20I; of the West Virginia Board of Pharmacy, Account No. 8105-30I; of the West Virginia Board of Examiners of Practical Nurses, Account No. 8106-35I; of the West Virginia Board of Registered Nurses, Account No. 8110-55I; of the West Virginia Board of Chiropractic Examiners, Account No. 8130-05I; of the West Virginia Board of Embalmers and Funeral Directors, Account No. 8131-10I; of the Department of Finance and Administration-Revolving Fund, Account No. 8140-08I; of the Department of Finance and Administration-State Agency for Surplus Property, Account No. 8145-45I; of the Department of Finance and Administration-Information Systems Services Division, Account No. 8152-07I; of the Department of Finance and Administration-Transportation Division, Account No. 8157-07I; of the Department of Agriculture-Indirect Cost Funds, Account No. 8185-10I; of the Department of Agriculture-Rural Resources, Account No. 8190-13I; of the Department of Agriculture-Investment Account, Account No. 8194-16I; of the Department of Agriculture, Soil Conservation Committee-Operation Account, Account No. 8195-06I; of the Department of Agriculture-Small Watershed Program, Account No. 8195-09I; of the Department of Corrections-Prison Industries, Account No. 8222-05I; of the Regional Jail Authority, Account No. 8225-75I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-20I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-21I; of the State Department of Education-Textbook Adoption, Account No. 8240-46I; of the State Department of Education-FFA-FHA Camp and Conference Center-Room and Board, Account No. 8245-07I; of the State Department of Education-FFA-FHA Camp and Conference Center-Crafts Program, Account No. 8245-08I; of the State Department of Education-Cedar Lakes, Account No. 8245-12I; of the Department of Employment Security-Interest on Employers Delinquent Contributions, Account No. 8250-08I; of the Department of
Veterans Affairs-Veterans Home Improvement, Account No. 8260-11I; of the Department of Veterans Affairs-Resident Maintenance Collection, Account No. 8260-13I; of the Public Employees Insurance Board-Basic Insurance Premium, Account No. 8265-05I; of the Public Employees Insurance Board-Administration Expense, Account No. 8265-06I; of the Public Employees Insurance Board-Optional Life Insurance Premiums, Account No. 8265-07I; of the State Board of Insurance Premiums and Self Insured Losses, Account No. 8275-06I; of the State Board of Insurance-Professional Liability Trust Fund, Account No. 8275-07I; of the State Board of Insurance-Mine Subsidence Insurance Fund, Account No. 8275-08I; of the Public Service Commission-Special Revenue Administration, Account No. 8280-08I; of the Public Service Commission-Gas Pipeline Division, Account No. 8285-08I; of the Public Service Commission-Motor Carrier Division, Account No. 8290-08I; of the Department of Natural Resources-Watters Smith State Park, Account No. 8320-11I; of the Department of Natural Resources-Investments, Account No. 8325-09I; of the Railroad Maintenance Authority-South Branch Valley Railroad, Account No. 8344-06I; of the Department of Public Safety-Purchase of Investments, Account No. 8350-12I; of the Department of Public Safety-Criminal Investigation, Account No. 8351-29I; of the Department of Public Safety-Purchase of Investments, Account No. 8352-12I; of the Department of Public Safety-Drunk Driving Prevention, Account No. 8355-10I; of the Department of Banking-Revolving Account, Account No. 8392-06I; of the Department of Banking-Purchase of Investments, Account No. 8395-08I; of the Secretary of State-Filing Fees, Account No. 8436-06I; of the 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,
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 accruing interest in certain designated interest accounts should be expired into the state fund, general revenue of the state, for use for budgetary purposes through the entire fiscal year of 1987-88; 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 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 be supplemented, amended, transferred and caused to expire from such accounts and back into the state fund, general revenue of the state, monthly, and through the entire fiscal year of 1987-88; 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 Community and Industrial Development, Domestic Violence-Operations, Account No. 8026-221; of the Office of Community and Industrial Development, Domestic Violence-Administration, Account No. 8026-231; of the Office of Community and Industrial Development, Law-Enforcement Training-Operations, Account No. 8026-241; of the Office of Community and Industrial Development, Law-Enforcement Training-Administration, Account No. 8026-251; of the Office of Community and Industrial 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. 8100-051; 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. 8131-10I; of the Department of Finance and Administration-Revolving Fund, Account No. 8140-08I; of the Department of Finance and Administration-State Agency for Surplus Property, Account No. 8145-45I; of the Department of Finance and Administration-Information Systems Services Division, Account No. 8152-07I; of the Department of Finance and Administration-Transportation Division, Account No. 8157-07I; of the Department of Agriculture-Indirect Cost Funds, Account No. 8185-10I; of the Department of Agriculture-Rural Resources, Account No. 8190-13I; of the Department of Agriculture-Investment Account, Account No. 8194-16I; of the Department of Agriculture, Soil Conservation Committee-Operation Account, Account No. 8195-06I; of the Department of Agriculture-Small Watershed Program, Account No. 8195-09I; of the Department of Corrections-Prison Industries, Account No. 8222-05I; of the Regional Jail Authority, Account No. 8225-75I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-20I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-21I; of the State Department of Education-Textbook Adoption, Account No. 8240-46I; of the State Department of Education-FFA-FHA Camp and Conference Center-Room and Board, Account No. 8245-07I; of the State Department of Education-FFA-FHA Camp and Conference Center-Crafts Program, Account No. 8245-08I; of the State Department of Education-Cedar Lakes, Account No. 8245-12I; of the Department of Employment Security-Interest on Employers Delinquent Contributions, Account No. 8250-08I; of the Department of Veterans Affairs-Veterans Home Improvement, Account No. 8260-11I; of the Department of Veterans Affairs-Resident Maintenance Collection, Account No. 8260-13I; of the Public Employees Insurance Board-Basic Insurance Premium, Account No. 8265-05I; of the Public Employees Insurance Board-Administration Expense, Account No. 8265-06I; of the Public Employees Insurance Board-Optional Life Insurance Premiums, Account No. 8265-07I; of the State Board of Insurance-Premiums and Self Insured Losses, Account
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-Watters 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 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 Authority-Microwave Interconnect System, Account
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-eight, to the Secretary of State, Account No. 2500, supplementing Enrolled Committee Substitute for H. B. 2100, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill.

***

Clerk's Note: The two preambles were deleted by the Governor.
Be it enacted by the Legislature of West Virginia:

That Account No. 2500, Enrolled Committee Substitute for H. B. 2100, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill, be supplemented by adding to such account the following new line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

INCORPORATING AND RECORDING

23—Secretary of State

Acct. No. 2500

7a Excess Levy Special

Election Funding ........ $ — $1,000,000

The purpose of this supplementary appropriation bill is to provide funds for the special election in respect of the excess levy for educational purposes, with such funding being available for expenditure in fiscal year 1987-88.

CHAPTER 125

(S. B. 765—Originating in the Senate Committee on Finance)

[Passed June 14, 1987; in effect from passage. Approved by the Governor following language and monetary deletions.]

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 Office of Community and Industrial Development, Account No. 1210, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

***

Clerk's Note: The preambles were deleted by the Governor.
Be it enacted by the Legislature of West Virginia:

That Account No. 1210, chapter twenty-nine, 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 new line items:

<table>
<thead>
<tr>
<th>Title 2. Appropriations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>EXECUTIVE</td>
</tr>
<tr>
<td>6—Office of Community and Industrial Development</td>
</tr>
<tr>
<td>Acct. No. 1210</td>
</tr>
<tr>
<td>Line Items</td>
</tr>
<tr>
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Clerk's Note: Line items 30 through 30v and accompanying dollar amounts were deleted by the Governor.
31 ***
32
33
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36 ***
37 Any unexpended balances remaining ***
38
39 *** are hereby reappropriated for
40 expenditure during the fiscal year 1987-88.

Clerk’s Note: Language was deleted by the Governor on lines 31 through 36 and a portion on lines 37 through 39.

CHAPTER 126
(S. B. 766—Originating in the Senate Committee on Finance)

[Passed June 14, 1987; in effect from passage. Approved by the Governor following language deletions.]

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 State Department of Health-Central Office, Account No. 4000, 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. 4000, chapter twenty-nine, 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 new line item:

Clerk’s Note: The preambles were deleted by the Governor.
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HEALTH AND HUMAN SERVICES

46—State Health Department—
Central Office
Acct. No. 4000

Any unexpended balance ***

*** is hereby reappropriated for expenditure during the fiscal year 1987-88.

Clerk’s Note: The Governor deleted line item 38 through 38b language, language on lines 10 through 15 and a portion on lines 16 through 18.

CHAPTER 127
(S. B. 768—Originating in the Senate Committee on Finance)

[Passed June 14, 1987; in effect from passage.
Approved by the Governor following language and monetary deletions.]

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 State Commission on Aging, Account No. 4060, 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. 4060, chapter twenty-nine, 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 new line items:

** TITLE 2. APPROPRIATIONS.  
Section 1. Appropriations from general revenue.  
HEALTH AND HUMAN SERVICES  
51—State Commission On Aging  
Acct. No. 4060  

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Any unexpended balance are hereby reappropriated for expenditure during the fiscal year 1987-88.

Clerk's Note: The Governor deleted the preambles, language and monetary amounts on line items 12 through 12c, all language on lines 11 through 15 and a portion of lines 16 through 18.
CHAPTER 128
(S. B. 762—By Senators Craigo and Shaw)
[Passed May 28, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred thirty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to empowering the board of education to promulgate rules and regulations to provide for a policy for refunding the purchase price of any such correspondence course.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

*§46A-2-138. Buyer's right to cancel certain subscriptions and other obligations.

1 (a) When a buyer has become indebted or paid cash on a contract for future deliveries of a correspondence course, on any contract entered into after the effective date of this section for truck driver, modeling or any other occupational or business course with a private proprietary school, or a multiple magazine subscriptions contract, other than for single subscriptions direct with the publisher thereof, the buyer may cancel and terminate such contract at any time by mailing a notice of cancellation by first class United States mail to the person to whom the indebtedness is owed, or with whom the contract was made, or his assignee, which notice shall forthwith terminate and cancel any financial obligation for goods or services not received by the buyer prior to the mailing of such notice of cancellation. The indebtedness for correspondence course materials received and not returned shall not exceed the reasonable store purchase price of such materials. In addition

*Clerk's Note: This section was also amended by SB 543, which passed March 14, 1987, in effect ninety days from passage.
thereto, in regard to a correspondence course contract (in part or wholly by correspondence) the state board of education is hereby empowered and directed to promulgate rules and regulations setting forth policy for the refund of tuition fees or other indebtedness and cancellation in whole or in part of such a contract by a buyer, with regard to goods and services not fully delivered. Such rules and regulations shall include, but not be limited to, provisions for allowing such cancellation by a buyer by mailing notice of intent to cancel and returning all materials received, and that the seller shall return any moneys due buyer within twenty days upon receipt of the notice of cancellation.

(b) Any buyer not receiving a refund of all moneys paid and due within twenty days of cancellation of any contract under this section has a direct cause of action upon any bond filed with the department of education or board of regents to secure performance of legal obligation pursuant to the provisions of section ten, article two, chapter eighteen of this code.

(c) Notwithstanding any other provision of law to the contrary, with respect to contracts which are the subject of or are intended to become the subject of a transaction as provided for in this section, no seller shall:

(1) Exclude, modify or otherwise attempt to limit any provision addressed under this section; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available under this section.

Any such exclusion, modification or attempted limitation shall be void.

CHAPTER 129

(Com. Sub. for H. B. 2462—By Delegates McCormick and McKinley)

[Passed March 14, 1987; in effect ninety days from passage. 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 governmental entities and programs for termination.

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:

(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.

(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.

(3) On the first day of July, one thousand nine hundred eighty-three: Anatomical board; economic opportunity advisory committee; community development authority board.

(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.

(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: Civil service commission advisory board; council of finance and administration; and the motorcycle safety standards and specifications 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; real estate commission; geological and economic survey; the department of labor; the division of archives and history of the department of culture and history; and the public employees insurance board.

(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; and the child advocate office, department of human services.

(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;  
the family law masters system; state lottery commission;  
the department of commerce; and the West Virginia  
health care cost review authority.

(12) On the first day of July, one thousand nine  
hundred ninety-two: State water resources board; water  
resources division, department of natural resources;  
whitewater advisory board; 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 board of examiners in  
counseling; and 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.

(13) On the first day of July, one thousand nine  
hundred ninety-three: Commission on uniform state  
laws; state structural barriers compliance board; and  
the oil and gas inspectors examining board.

CHAPTER 130  
(H. B. 3203—By Delegate Phillips)

[Passed May 14, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article one,  
chapter twenty-nine of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating  
to continuing the division of archives and history,  
department of culture and history, following an audit by  
the joint committee on government operations.
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. Continuation of division of archives and history.

1 After having conducted a performance and fiscal 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-eight.

CHAPTER 131
(S. B. 536—By Senators Brackenrich and Loehr)


AN ACT to amend article nine, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto five new sections, designated sections one, two, three, four and five; to amend and reenact section two, article nine, chapter eleven of said code; to amend article twelve-a of said chapter eleven by adding thereto a new section, designated section twenty-five; to amend and reenact sections two-d, two-m and twenty-eight, article thirteen of said chapter; to further amend said article thirteen by adding thereto a new section, designated section thirty-one; to amend and reenact sections two, three and four, article thirteen-a of said chapter; to further amend said article thirteen-a by adding thereto a new section, designated section thirty-one; to amend and reenact section two, article thirteen-b of said chapter; to further amend said article thirteen-b by adding thereto a new section, designated section eighteen; to amend and
reenact sections two, four-b, five, six and nine, article fifteen of said chapter; to further amend said article fifteen by adding thereto four new sections, designated sections five-a, nine-b, nine-c and nine-d; to amend and reenact sections two, three and eighteen, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto three new sections, designated sections three-b, three-c and three-d; to amend and reenact sections four-e, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, fifty-one and seventy-four, article twenty-one of said chapter; to further amend said article twenty-one by adding thereto two new sections, designated sections four-f and forty-three; to amend and reenact sections three, seven, nine, thirteen and seventeen, article twenty-three of said chapter; to further amend said article twenty-three by adding thereto a new section, designated section twenty-five; to amend and reenact sections three-a, six and seven, article twenty-four of said chapter; and to further amend said article twenty-four by adding thereto a new section, designated section twenty-three, all relating to enacting the West Virginia tax reform act of 1987; creating voluntary check-off designation for personal income tax refund to gild the capitol dome; creating special fund therefor and specifying use of fund; making certain technical changes in tax laws; creating limited credit for consumers sales and service tax and use tax paid on certain exempt sales against annual tax on incomes of certain carriers, business and occupation tax, severance tax, telecommunications tax, personal income tax, business franchise tax, corporation net income tax or payments for personal income tax withholding; exempting from business and occupation tax gross receipts from sales of certain electric power used in the manufacture of ferroalloy in this state; exempting from business and occupation tax gross receipts from certain sales of natural gas for use in in-state chemical manufacturing; providing business and occupation tax transition rule for persons who employ certain accounting methods; defining certain terms relating to limestone and sandstone for purposes of severance tax;
technical changes in severance tax rates; defining the extent of the privilege of severing and producing limestone and sandstone; technical change defining certain terms in telecommunications tax including "gross receipts" and effective date; modifying certain definitions in consumers sales and service tax; defining certain terms in consumers sales and service tax including "directly used or consumed," "contracting," "manufacturing," "transportation," "transmission," "communication" and "production of natural resources"; modifying cross references relating to consumers sales and service tax and use tax exemption certificates; allowing a certain discount for vendors collecting consumers sales and service tax and use tax exemption certificates; creating an exemption to prohibition of profit accruing to person as a result of collection of such tax; modifying exemptions from consumers sales and service tax and use tax by limiting exemptions granted to persons engaged in the businesses of contracting, manufacturing, transportation, transmission, communication or production of natural resources to property or services directly used or consumed in various activities and by providing effective date; removing exemption for sales and services rendered for use in the business of selling tangible personal property and effective date; exempting from consumers sales and service tax certain sales to persons subject to business and occupation tax, severance tax, and telecommunications tax; exempting from consumers sales and service tax sales of propane to consumers for poultry house heating purposes and providing method by which seller may apply for refund; exempting from consumers sales and service tax certain sales of tangible personal property paid for with food stamps and effective date; exempting from consumers sales and service tax sales of tickets for certain school-sponsored activities; exempting from consumers sales and service tax sales of electronic data processing services and related software and definitions thereof; providing for method of claiming consumers sales and service tax and use tax exemptions, refunds of tax, and credit against other taxes; providing for delivery of consumers sales and service tax and use tax exemption certificates by
certain persons in lieu of tax; providing for direct pay permits to be issued by the tax commissioner; imposing use tax on taxable services and effective date; limiting use tax exemption provided for use of property and services by certain businesses; changing rate of personal income tax and effective date; updating Internal Revenue Code references; changing definition of West Virginia taxable income; eliminating reference to West Virginia deduction in personal income tax for resident and nonresident individuals; modifying definition of West Virginia adjusted gross income in personal income tax; changing personal income tax modifications increasing and reducing adjusted gross income; eliminating personal income tax deductions of resident and nonresident individuals and effective date; increasing amount of West Virginia personal exemption in personal income tax to two thousand dollars per exemption and effective date; providing additional personal exemption for certain surviving spouses; limiting ability of husband and wife to file separate West Virginia personal income tax returns; modifying deductions in business franchise tax; making technical changes; providing that partnerships must file annual business franchise tax returns for taxable year on the fifteenth day of the fourth month of the next succeeding taxable year; modifying cross references in business franchise tax; allowing certain credit against business franchise tax for businesses subject to the business and occupation tax; modifying certain definitions relating to the corporation net income tax; modifying certain adjustments in determining West Virginia taxable income for corporation net income tax purposes; and modifying the definition of income-producing activity for purposes of the corporation net income tax.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto five new sections, designated sections one, two, three, four and five; that section two, article nine, chapter eleven of said code be amended and reenacted; that article twelve-a of said chapter eleven be amended by
adding thereto a new section, designated section twenty-five; that sections two-d, two-m and twenty-eight, article thirteen of said chapter be amended and reenacted; that said article thirteen of said chapter be further amended by adding thereto a new section, designated section thirty-one; that sections two, three and four, article thirteen-a of said chapter be amended and reenacted; that said article thirteen-a be further amended by adding thereto a new section, designated section twenty-four; that section two, article thirteen-b of said chapter be amended and reenacted; that said article thirteen-b be further amended by adding thereto a new section, designated section eighteen; that sections two, four-b, five, six and nine, article fifteen of said chapter be amended and reenacted; that said article fifteen be further amended by adding thereto four new sections, designated sections five-a, nine-b, nine-c and nine-d; that sections two, three and eighteen, article fifteen-a be amended and reenacted; that said article fifteen-a be further amended by adding thereto three new sections, designated sections three-b, three-c and three-d; that sections four-e, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, fifty-one and seventy-four, article twenty-one of said chapter be amended and reenacted; that said article twenty-one be further amended by adding thereto two new sections, designated sections four-f and forty-three; that sections three, seven, nine, thirteen and seventeen, article twenty-three of said chapter be amended and reenacted; that said article twenty-three be further amended by adding thereto a new section, designated section twenty-five; that sections three-a, six and seven, article twenty-four of said chapter be amended and reenacted; and that said article twenty-four be further amended by adding thereto a new section, designated section twenty-three, all to read as follows:

Chapter
5A. Department of Finance and Administration.
11. Taxation.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 9. VOLUNTARY GILDING THE DOME CHECK-OFF PROGRAM.
§5A-9-1. Legislative intent.


§5A-9-3. Contributions credited to special fund.

§5A-9-4. Use of funds.

§5A-9-5. Effective date.

§5A-9-1. Legislative intent.

It is in the public interest to preserve and maintain the state capitol building for the use and benefit of the citizens of West Virginia. The intent of this legislation is to provide additional funding for the preservation and maintenance of the state capitol building, to be primarily used to refurbish the capitol dome with gold leaf.

The financing of this program will be derived from a voluntary check-off and contribution designation on state personal income tax return forms of a portion or all of a taxpayer’s refund. The funding provided shall be supplemental to existing revenues.


(a) Each West Virginia individual income tax return form shall contain a designation as follows:

WEST VIRGINIA GILDING THE DOME CHECK-OFF PROGRAM.

Check ( ) if you wish to designate $1, $5, $10 or more of your tax refund for this program. If joint return, check ( ) if spouse wishes to designate $1, $5, $10 or more.

(b) Each individual taxpayer desiring to contribute to the voluntary gilding the dome program may designate by placing an “X” in the appropriate box on the state income tax return form. His contribution shall be credited to said program.

§5A-9-3. Contributions credited to special fund.

The tax department shall determine by the first day of July of each year the total amount designated pursuant to this legislation and shall report such amount to the state treasurer who shall credit such amount to a special department of finance and administration fund.
§5A-9-4. Use of funds.

1 The funds shall be used for the purpose of preserving and maintaining the dome of the capitol by the use of gold leaf in covering the dome. The commissioner of finance and administration shall on the fifteenth day of January each year furnish the Legislature with a report stating the amount of money that has been provided and how such moneys have been expended.

§5A-9-5. Effective date.

1 This article shall apply to all personal income tax returns required to be filed on or after the first day of July, one thousand nine hundred eighty-seven, and before the first day of July, one thousand nine hundred ninety.

CHAPTER 11. TAXATION.

Article
12A. Annual tax on incomes of certain carriers.
13A. Severance Taxes.
13B. Telecommunications Tax.
15. Consumers Sales Tax.
15A. Use Tax.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

1 (a) The provisions of this article shall apply to the following taxes imposed by chapter eleven: (1) The inheritance and transfer taxes and estate taxes imposed by article eleven; (2) the business franchise registration tax imposed by article twelve; (3) the annual tax on incomes of certain carriers imposed by article twelve-a; (4) the business and occupation tax imposed by article thirteen; (5) the gasoline and special fuels excise tax imposed by article fourteen; (6) the motor carrier road tax imposed by article fourteen-a; (7) the consumers sales and service tax imposed by article fifteen; (8) the use tax imposed by article fifteen-a; (9) the cigarette tax imposed by article seventeen; (10) the soft drinks tax imposed by article nineteen; (11) the personal income
(b) The provisions of this article shall also apply to the West Virginia tax procedure and administration act in article ten of chapter eleven, and to any other articles of this chapter when such application is expressly provided for by the Legislature.

(c) Each and every provision of this article shall apply to the articles of this chapter listed in subsections (a) and (b), with like effect, as if the provisions of this article were applicable only to such tax and were set forth in extenso in such article.

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-25. Credit for consumers sales and service tax and use tax paid.

1 The tax imposed by this article shall be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2d. Public service or utility business.

§11-13-2m. Business of generating or producing electric power; exception; rates.


§11-13-31. Credit for consumers sales and service tax and use tax paid.

*§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 (1) Street and interurban and electric railways, one and four-tenths percent;

*Clerk's Note: This section was also amended by S. B. 310, which passed prior to this act.
(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 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: And 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, or is separately metered and consumed in the manufacture of ferroalloy in this state, and the rate reduction herein provided to the taxpayer
shall be passed on to the manufacturer of the chlorine or ferroalloy. As used in this section, the term “ferroalloy” means any of various alloys of iron and one or more other elements used as a raw material in the production of steel: And provided further, That the term does not include the final production of steel;

(4) Natural gas companies, four and twenty-nine hundredths percent on the gross income: Provided, That the sale of natural gas under this section shall be exempt from the tax imposed by this section and section two of this article to the extent that the natural gas is separately metered and is gas from which the purchaser derives hydrogen and carbon monoxide for use in the manufacture of chemicals in this state, and the full economic benefit of the exception herein provided to the taxpayer shall be passed on to such purchaser of the natural gas: Provided, however, That there shall be no exemption for the sale of any natural gas from which the purchaser derives carbon monoxide or hydrogen for the purpose of resale;

(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.

§11-13-2m. Business of generating or producing electric power; exception; rates.

(1) Upon every person engaging or continuing within this state in the business of generating or producing electric power for sale, profit or commercial use, either directly or through the activity of others, in whole or in
part, when the sale thereof is not subject to tax under section two-d of this article, the amount of the tax to be equal to the value of the electric power, as shown by the gross proceeds derived from the sale thereof by the generator or producer of the same multiplied by a rate of four percent, except that the rate shall be two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year: Provided, 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.

(2) The measure of this tax shall be the value of all electric power generated or produced in this state for sale, profit or commercial use, regardless of the place of sale or the fact that transmission may be to points outside this state: Provided, That the gross income received by municipally owned plants generating or producing electricity shall not be subject to tax under this article.


(a) The provisions of sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article are inoperative as of the first day of July, one thousand nine hundred eighty-seven. Persons who are fiscal year taxpayers having a fiscal year ending on the thirtieth day of June, one thousand nine hundred eighty-seven, shall file their annual return for fiscal year one thousand nine hundred eighty-seven, on or before the thirty-first day of July, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due.
(b) Persons who are calendar year taxpayers and who are not subject to the tax imposed by this article for months beginning on or after the first day of July, one thousand nine hundred eighty-seven, and persons who are fiscal year taxpayers having a fiscal year ending on any date other than the thirtieth day of June, one thousand nine hundred eighty-seven, and who are not subject to the tax imposed by this article for months beginning on or after the first day of July, one thousand nine hundred eighty-seven, shall file their annual returns on or before the thirty-first day of July, one thousand nine hundred eighty-seven, for the short taxable year which ended the thirtieth day of June, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due. Persons required to file an annual return for a short taxable year may claim a portion of the annual exemption allowed under section three of this article, determined in accordance with the amount of the exemption allowable for each month in the short taxable year. The five thousand dollar annual exemption allowed to producers of natural gas shall similarly be calculated and allowed on a monthly basis at the rate of four hundred sixteen dollars and sixty-six cents for each month of the short taxable year ending on the thirtieth day of June, one thousand nine hundred eighty-seven.

(c) Persons engaged in activities taxable under sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article prior to the first day of July, one thousand nine hundred eighty-seven, are taxable under either article thirteen-a or twenty-three of this chapter, or both, on and after such date.

(d) Persons who keep their records using the accrual method of accounting shall file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method. A taxpayer shall file an amended return for such year and pay any additional taxes due within thirty days after determining that gross income, gross proceeds of sale or
(e) Persons who keep their records using the cash method of accounting may file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method: Provided, That such a taxpayer shall file a supplemental return for such year within one month after the close of each quarter during which he received gross income or gross proceeds of sale for any activity or portion thereof completed prior to the first day of July, one thousand nine hundred eighty-seven, and pay any additional taxes shown on the supplemental return to be due. The purpose of this requirement is to minimize the advantage or disadvantage associated with the different methods of accounting when the business and occupation tax no longer applies to the taxpayer's ongoing business activity.

(f) Tax liabilities, if any arising for taxable years ending prior to the first day of July, one thousand nine hundred eighty-seven, shall be determined, administered, assessed and collected as if sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article had not been effectively repealed; and the rights and duties of the taxpayer and the state of West Virginia shall be fully and completely preserved.

(g) Persons who keep their records using a method of accounting other than the accrual method or cash method shall file their returns in accordance with regulations and instructions promulgated by the tax commissioner.

§11-13-31. Credit for consumers sales and service tax and use tax paid.

The tax imposed by this article shall be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.
ARTICLE 13A. SEVERANCE TAXES.


§11-13A-3. Imposition of privilege tax; phase-in of modified rates and effective dates therefor.

§11-13A-4. Treatment processes as production.


(a) General. — When used in this article, or in the administration of this article, the 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.

(b) Terms defined.

(1) “Coal” means and includes any material composed predominantly of hydrocarbons in a solid state.

(2) “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 function mentioned or described in this article or regulations promulgated thereunder.

(3) “Economic interest” for the purpose of this article is synonymous with the economic interest ownership required by section 611 of the Internal Revenue Code in effect on the thirty-first day of December, one thousand nine hundred eighty-five, entitling the taxpayer to a depletion deduction for income tax purposes: Provided, That a person who only receives an arm’s length royalty shall not be considered as having an economic interest.

(4) “Extraction of ores or minerals from the ground” includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining.

(5) “Fiduciary” means and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(6) “Gross value” in the case of natural resources means the market value of the natural resource product,
in the immediate vicinity, where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, "gross value" is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the amount received or receivable by the taxpayer.

(B) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.

(C) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(D) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of the natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processing natural resources of similar grade and quality reduced by the fair market value of the natural resources of similar grade and
quality and in the same condition immediately preced-
ing the processing of the natural resources.

(F) In all instances, the gross value shall not be
reduced by any state or federal taxes, royalties, sales
commissions or any other expense.

(G) For natural gas, gross value is the value of the
natural gas at the wellhead immediately preceding
transportation and transmission.

(H) For limestone or sandstone quarried or mined,
gross value is the value of such stone immediately upon
severance from the earth.

(7) "Mining" includes not merely the extraction of
ores or minerals from the ground but also those
treatment processes considered as mining under this
article, and those treatment processes necessary or
incidental thereto.

(8) "Natural resource" means all forms of minerals
including, but not limited to, rock, stone, limestone, coal,
shale, gravel, sand, clay, natural gas, oil and natural gas
liquids which are contained in or on the soils or waters
of this state, and includes standing timber.

(9) "Partnership" includes a syndicate, group, pool,
joint venture, or other unincorporated organization,
through or by means of which natural resources are
severed, extracted, reduced to possession and produced
or prepared in this state for sale, profit or commercial
use. "Partner" includes a member of such a syndicate,
group, pool, joint venture or organization.

(10) "Person" or "company" are herein used interchan-
geably and include any individual, firm, partnership,
mining partnership, joint venture, association, corpora-
tion, trust or any other group or combination acting as
a unit, and the plural as well as the singular number,
unless the intention to give a more limited meaning is
declared by the context.

(11) "Processed" or "processing" as applied to:

(A) Oil and natural gas shall not include any conver-
sion or refining process; and
(B) Limestone or sandstone quarried or mined shall not include any treatment process or transportation after the limestone or sandstone is severed from the earth.

(12) "Related parties" means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes natural resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm's length passive royalty interest. In the case of related parties, the tax commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(13) "Sale" includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof.

(14) "Severing" or "severed" means the physical removal of the natural resources from the earth or waters of this state by any means: Provided, That "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from the earth: Provided, however, That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(15) "Stock" includes shares in an association, joint-stock company or corporation.

(16) "Tax commissioner" means the tax commissioner of the state of West Virginia, or his delegate.

(17) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this
article. “Taxable year” means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(18) “Taxpayer” means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or has an economic interest therein is the taxpayer.

(19) “This code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(20) “This state” means the state of West Virginia.

§11-13A-3. Imposition of privilege tax; phase-in of modified rates and effective dates therefor.

(a) Upon every person exercising the privilege of engaging or continuing within this state in severing, extracting, reducing to possession and producing for sale, profit or commercial use any natural resource product or products there is hereby imposed a tax in the amount to be determined by the application of rates against the gross value of the articles produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided, multiplied by the rates, in the classifications and according to the effective dates in subsection (b) of this section.

(b) Tax rates; classifications; effective dates. — Beginning on and after the first day of July, one thousand nine hundred eighty-seven, and for each first
day of July thereafter, as specified below, the rates of
tax on each respective classification and for each
respective year are as follows:

(1) On coal, and including the thirty-five one hun-
dredths (.35) of one percent additional severance tax on
such coal for the benefit of counties and municipalities,
as provided in section six of this article, on

July 1, 1987 — three and eighty-five one hundredths
(3.85) percent;

July 1, 1988 — three and eighty-eight one hundredths
(3.88) percent;

July 1, 1989 — three and ninety-one one hundredths
(3.91) percent;

July 1, 1990 — three and ninety-four one hundredths
(3.94) percent;

July 1, 1991 — three and ninety-seven one hundredths
(3.97) percent; and

July 1, 1992 — and thereafter — four (4.0) percent.

(2) On limestone or sandstone quarried or mined, on

July 1, 1987 — two and two-tenths (2.2) percent;

July 1, 1988 — two and fifty-six one hundredths (2.56)
percent;

July 1, 1989 — two and ninety-two one hundredths (2.92)
percent;

July 1, 1990 — three and twenty-eight one hundredths (3.28)
percent;

July 1, 1991 — three and sixty-four one hundredths (3.64)
percent; and

July 1, 1992 — and thereafter — four (4.0) percent.

(3) On oil, on

July 1, 1987 — four and thirty-four one hundredths
(4.34) percent;

July 1, 1988 — four and two hundred seventy-two one
thousandths (4.272) percent;
July 1, 1989 — four and two hundred four one thousandths (4.204) percent;
July 1, 1990 — four and one hundred thirty-six one thousandths (4.136) percent;
July 1, 1991 — four and sixty-eight one thousandths (4.068) percent; and
July 1, 1992 — and thereafter — four (4.0) percent.

(4)(a) On natural gas, on
July 1, 1987 — six and five-tenths (6.5) percent;
July 1, 1988 — six (6.0) percent;
July 1, 1989 — five and five tenths (5.5) percent;
July 1, 1990 — five (5.0) percent;
July 1, 1991 — four and five-tenths (4.5) percent; and
July 1, 1992 — and thereafter — four (4.0) percent.

(4)(b) On natural gas produced from new wells drilled and placed in service on and after July 1, 1987 — four (4.0) percent.

(5) On sand, gravel or other mineral product not quarried or mined, on
July 1, 1987 — four and thirty-four one hundredths (4.34) percent;
July 1, 1988 — four and two hundred seventy-two one thousandths (4.272) percent;
July 1, 1989 — four and two hundred four one thousandths (4.204) percent;
July 1, 1990 — four and one hundred thirty-six one thousandths (4.136) percent;
July 1, 1991 — four and sixty-eight one thousandths (4.068) percent; and
July 1, 1992 — and thereafter — four (4.0) percent.

(6) On timber, on and after July 1, 1987 — two and five-tenths (2.5) percent.
(7) On other natural resources, on

July 1, 1987 — two and eighty-six one hundredths (2.86) percent;

July 1, 1988 — three and eighty-eight one thousandths (3.088) percent;

July 1, 1989 — three and three hundred sixteen one thousandths (3.316) percent;

July 1, 1990 — three and five hundred forty-four one thousandths (3.544) percent;

July 1, 1991 — three and seven hundred seventy-two one thousandths (3.772) percent; and

January 1, 1992 — and thereafter — four (4.0) percent.

(c) Tax in addition to other taxes. — The taxes imposed by this article shall apply to all persons severing or processing (or both severing and processing) natural resources in this state and shall be in addition to all other taxes imposed by law.

(d) Statement of purpose; relationship to existing contracts. — It is the intent of the Legislature in enacting this article thirteen-a to continue the imposition of the tax upon exercising the privilege of engaging or continuing within this state the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use, natural resource products, which was imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven, by such act. The provisions of any contract entered into prior to the effective date of this act and relating to the allocation, reimbursement, payment or assessment of the tax imposed by section two-a, article thirteen of this chapter, formerly, shall apply with full force and effect to the tax imposed by this article; it being the intent of the Legislature that, for purposes of any such contractual provision, the tax imposed by this article shall be considered the same as the tax imposed by section two-
§11-13A-4. Treatment processes as production.

(a) Treatment processes considered as mining. — The following treatment processes (and the treatment processes necessary or incidental thereto) when applied by the mine owner or operator to natural resources mined in this state shall be considered as mining and part of the privilege taxed under this article.

(1) Coal. — In the case of coal: Cleaning, breaking, sizing, dust allaying, treating to prevent freezing and loading for shipment.

(2) Minerals customarily sold in crude form. — In the case of other minerals which are customarily sold in crude form: Sorting, concentrating, sintering and substantially equivalent processes to bring them to shipping grade and form, and loading for shipment.

(3) Minerals not customarily sold in crude form. — In the case of other minerals which are not customarily sold in the form of the crude mineral products: Crushing, grinding and beneficiation by concentration (gravity, flotation, amalgamation or electrostatic or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting or refining), or substantially equivalent processes or combinations of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit.

(4) Oil shale. — In the case of oil shale: Extraction from the ground, crushing, loading into the retort and retorting, but not hydrogenation, refining or any other process subsequent to retorting; and

(5) Other. — Any other treatment process provided for in a legislative rule prescribed by the tax commissioner which, with respect to the particular ore or mineral, is not inconsistent with the preceding subdivisions of this subsection (a).
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(b) Treatment processes not considered as mining. — Unless such processes are otherwise provided for in subsection (a), or are necessary or incidental to processes provided for in subsection (a), the following treatment processes shall not be considered as "mining":

- Electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action and molding or shaping.

(c) Treatment processes considered part of production of oil, natural gas and natural gas liquids. — The privileges of severing and producing oil and natural gas shall not include any conversion or refining process.

(d) Timber production privilege. — The privilege of severing and producing timber shall end once the tree is severed and delimbed.

(e) Limestone and sandstone quarried or mined production privilege. — The privilege of severing and producing limestone and sandstone by quarrying or mining shall end once the limestone or sandstone is severed from the earth.


The tax imposed by this article shall be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.

ARTICLE 13B. TELECOMMUNICATIONS TAX.

§11-13B-18. Credit for consumers sales and service tax and use tax paid.


(a) General. — When used in this article, or in the administration of this article, the 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.
(b) Terms defined.

(1) Business. — The term "business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect.

(2) Communications channel. — The term "communications channel" or "channel" means the smallest discrete circuit or other means whereby a message, conversation, data set or signal may be communicated, which cannot be subdivided without destroying or diminishing its capacity to carry such communications.

(3) Communications pathway. — The term "communications pathway" means any conduit, wire, cable, microwave signal path, radio signal path or other pathway over which telecommunications can be carried. The length of the communications pathway of satellite repeater facilities or other satellite communications facilities is deemed to be the shortest distance over the surface of the earth between the point on the earth from which signals are sent to the satellite and the point on the earth where such signals are received from the satellite.

(4) 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 function mentioned or described in this article or regulations promulgated thereunder.

(5) Gross income. — The term "gross income" of a telephone company or communications carrier shall be defined as all gross income received from the provision of local exchange or long distance voice or data communications services but shall not include gross income from the provision of network access, billing or similar services provided to end users, other telephone companies, or communications carriers: Provided, That on and after the first day of July, one thousand nine hundred eighty-eight, the term "gross income" of a
telephone company or communications carrier shall not include gross income from the provision of commodities or services which shall be determined by the public service commission of West Virginia to be subject to competition. On or before the thirty-first day of December of each calendar year, the public service commission of West Virginia shall submit to the tax commissioner a listing of those commodities or services which it has determined to be subject to competition. Such listing shall constitute a conclusive determination for the purposes of defining “gross income” within the meaning of this subsection.

(6) Person. — The term “person” or “company” are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(7) Sale. — The term “sale” includes any transfer of the ownership or title to property or any provision of a service, whether for money or in exchange for other property or services, or a combination thereof.

(8) Tax commissioner. — The term “tax commissioner” means the tax commissioner of the state of West Virginia, or his delegate.

(9) Taxable year. — The term “taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in case of a return made for a fractional part of a year under the provisions of the article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(10) Taxpayer. — The term “taxpayer” means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in telecommunications business activity.
(11) Telecommunications. — The term "telecommunications" means all telephone, radio, light, light wave, radio telephone, telegraph and other communication, or means of communication, whether used for voice communication, computer data transmission, or other encoded symbolic information transfers. The term shall not include commercial broadcast radio or television, cable television or amateur or citizen's band radio.

§11-13B-18. Credit for consumers sales and service tax and use tax paid.

The tax imposed by this article shall be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-4b. Liability of purchaser; assessment and collection.
§11-15-5. Remittance of tax; discount.
§11-15-6. Vendor must show sale or service exempt; presumption.
§11-15-9b. Method for claiming exemptions; refunds of tax, credit against other taxes.
§11-15-9d. Direct pay permits.


For the purpose of this article:

(a) "Persons" shall mean any individual, partnership, association, corporation, municipal corporation, guardian, trustee, committee, executor or administrator;

(b) "Tax commissioner" shall mean the state tax commissioner;

(c) "Gross proceeds" shall mean the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses shall not be deducted, but any credit or refund made for goods returned may be deducted;

*Clerk's Note: This section was also amended by S. B. 760, which passed subsequent to this act.
(d) "Sale," "sales" or "selling" shall include any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose;

(e) "Vendor" shall mean any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property;

(f) "Ultimate consumer" or "consumer" shall mean a person who uses or consumes services or personal property;

(g) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons;

(h) "Tax" shall include all taxes, interest and penalties levied hereunder;

(i) "Service" or "selected service" shall include all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include contracting, personal services or the services rendered by an employee to his employer or any service rendered for resale;

(j) "Purchaser" shall mean a person who purchases tangible personal property or a service taxed by this article;

(k) "Personal service" shall include those:

(1) Compensated by the payment of wages in the ordinary course of employment;

(2) Rendered to the person of an individual without, at the same time, selling tangible personal property,
such as nursing, barbering, shoe shining, manicuring and similar services;

(l) "Taxpayer" shall mean any person liable for the tax imposed by this article;

(m) "Drugs" shall include all sales of drugs or appliances to a purchaser, upon prescription of a physician or dentist and any other professional person licensed to prescribe;

(n) (1) "Directly used or consumed" in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall mean used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.

(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall include only:

(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources or resulting from contracting activity;

(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources or which is the subject of contracting activity;

(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production, or production of natural resources or which is the subject of contracting activity;

(D) Measuring or verifying a change in property directly used in transportation, communication, trans-
mission, manufacturing production or production of
natural resources or contracting activity;

(E) Physically controlling or directing the physical
movement or operation of property directly used in
transportation, communication, transmission, manufactur-
ing production or production of natural resources or
contracting activity;

(F) Directly and physically recording the flow of
property undergoing transportation, communication,
transmission, manufacturing production or production
of natural resources or which is the subject of contract-
ing activity;

(G) Producing energy for property directly used in
transportation, communication, transmission, manufactur-
ing production or production of natural resources or
contracting activity;

(H) Facilitating the transmission of gas, water, steam
or electricity from the point of their diversion to
property directly used in transportation, communica-
tion, transmission, manufacturing production or produc-
ton of natural resources or contracting activity;

(I) Controlling or otherwise regulating atmospheric
conditions required for transportation, communication,
transmission, manufacturing production or production
of natural resources or contracting activity;

(J) Serving as an operating supply for property
undergoing transmission, manufacturing production or
production of natural resources or which is the subject
of contracting activity or for property directly used in
transportation, communication, transmission, manufact-
uring production or production of natural resources or
contracting activity;

(K) Maintenance or repair of property used in trans-
portation, communication, transmission, manufacturing
production or production of natural resources or
contracting activity;

(L) Storage, removal or transportation of economic
waste;

(M) Pollution control or environmental quality or
protection activity and personnel, plant, product or community safety or security activity; or

(N) Otherwise be used as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity.

(3) Uses of property or services which would not constitute direct use or consumption in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall include, but not be limited to:

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

(D) Production planning, scheduling of work, or inventory control;

(E) Marketing, general management, supervision, finance, training, accounting and administration; or

(F) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity, rather than an integral and essential part of such activities;

(o) “Contracting” shall mean the furnishing of work, or both materials and work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. For purposes of this definition, the term “structure” shall include, but not be limited to, everything built up or composed of parts joined together in some definite manner and attached to real property, or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time;
(p) "Manufacturing" shall mean a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed;

(q) "Transportation" shall mean the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location;

(r) "Transmission" shall mean the act or process of causing natural gas to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes;

(s) "Communication" shall mean all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and shall include commercial broadcast radio, commercial broadcast television and cable television;

(t) "Production of natural resources" shall mean the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.

§11-15-4b. Liability of purchaser; assessment and collection.

If any purchaser refuses to pay to the vendor the tax imposed by section three of this article, or in the case of a sale subject to section nine-c of this article, a purchaser refuses to sign and present to the vendor a proper certificate indicating the sale is not subject to this tax, or signs or presents to the vendor a false
protection activity and personnel, plant, product or
community safety or security activity; or
(N) Otherwise be used as an integral and essential
part of transportation, communication, transmission,
manufacturing production or production of natural
resources or contracting activity.
(3) Uses of property or services which would not
constitute direct use or consumption in the activities of
contracting, manufacturing, transportation, transmis-
sion, communication or the production of natural
resources shall include, but not be limited to:
(A) Heating and illumination of office buildings;
(B) Janitorial or general cleaning activities;
(C) Personal comfort of personnel;
(D) Production planning, scheduling of work, or
inventory control;
(E) Marketing, general management, supervision,
finance, training, accounting and administration; or
(F) An activity or function incidental or convenient to
transportation, communication, transmission, manufac-
turing production or production of natural resources or
contracting activity, rather than an integral and
essential part of such activities;
(o) “Contracting” shall mean the furnishing of work,
or both materials and work, in fulfillment of a contract
for the construction, alteration, repair, decoration or
improvement of a new or existing building or structure,
or any part thereof, or for removal or demolition of a
building or structure, or any part thereof, or for the
alteration, improvement or development of real prop-
erty. For purposes of this definition, the term “struc-
ture” shall include, but not be limited to, everything
built up or composed of parts joined together in some
definite manner and attached to real property, or which
adds utility to a particular parcel of property and is
intended to remain there for an indefinite period of
time;
(p) "Manufacturing" shall mean a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed;

(q) "Transportation" shall mean the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location;

(r) "Transmission" shall mean the act or process of causing natural gas to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes;

(s) "Communication" shall mean all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and shall include commercial broadcast radio, commercial broadcast television and cable television;

(t) "Production of natural resources" shall mean the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.

§11-15-4b. Liability of purchaser; assessment and collection.

1 If any purchaser refuses to pay to the vendor the tax imposed by section three of this article, or in the case of a sale subject to section nine-c of this article, a purchaser refuses to sign and present to the vendor a proper certificate indicating the sale is not subject to this tax, or signs or presents to the vendor a false
certificate, or after signing and presenting a proper certificate uses the items purchased in such manner that the sale would be subject to the tax, he shall be personally liable for the amount of tax applicable to the transaction or transactions.

In such cases the tax commissioner shall have authority to make an assessment against such purchaser, based upon any information within his possession or that may come into his possession. This assessment and notice thereof shall be made and given in accordance with sections seven and eight, article ten of this chapter.

This section shall not be construed as relieving the vendor from liability for the tax.

§11-15-5. Remittance of tax; discount.

No profit shall accrue to any person as a result of the collection of the tax levied by this article notwithstanding the total amount of such taxes collected may be in excess of the amount for which such person would be liable by the application of the levy of five percent to the gross proceeds of his sales, and the total of all taxes collected by any such person shall be returned and remitted to the tax commissioner, except that any person collecting and remitting such taxes in a timely manner as provided in section five-a of this article shall be entitled to the appropriate discount against the amount of tax payable by him under this article and such discount shall not be construed as a profit in violation of this section.


In the event the taxes due and payable under this article are remitted by the vendor to the tax commissioner on or before the tenth day of the month next succeeding the month in which the tax accrued, the

1Clerk's Note: This section (§11-15-5) was also amended by H. B. 3202, which passed subsequent to this act.

2Clerk's Note: This section (§11-15-5a) is new, as set out in this act. The section was subsequently repealed by H. B. 3202, which passed May 12, 1987.
5 vendor who has remitted the tax collected in such
6 manner is entitled to apply and discount against the
7 amount of tax payable by him under this article an
8 amount equal to two percent of the first one thousand
9 dollars of tax collected and an amount equal to one
10 percent of the tax collected over and above the first one
11 thousand dollars of the tax collected.
12
13 The tax commissioner shall promulgate in accordance
14 with chapter twenty-nine-a of this code such rules as are
15 necessary to carry out the purposes of this section.

§11-15-6. Vendor must show sale or service exempt; presumption.
1 In the case of sales subject to section nine-c of this
2 article, the burden of proving that a sale or service was
3 exempt from the tax shall be upon the vendor, unless
4 he takes from the purchaser an exemption certificate
5 signed by and bearing the address of the purchaser and
6 setting forth the reason for the exemption and substan-
7 tially in the form prescribed by the tax commissioner.
8 To prevent evasion, it shall be presumed that all sales
9 and services are subject to the tax until the contrary is
10 clearly established.

1 The following sales and services shall be exempt:
2 (a) Sales of gas, steam and water delivered to
3 consumers through mains or pipes, and sales of
4 electricity;
5 (b) Sales of textbooks required to be used in any of
6 the schools of this state;
7 (c) Sales of property or services to the state, its
8 institutions or subdivisions, and to the United States,
9 including agencies of federal, state or local governments
10 for distribution in public welfare or relief work;
11 (d) Sales of motor vehicles which are titled by the
12 department of motor vehicles and which are subject to
13 the tax imposed by section four, article three, chapter
14 seventeen-a of this code;

*Clerk's Note: This section (§11-15-9) was also amended by H. B. 2787, which passed prior to this act, and by S.B. 760, which passed subsequent to it.
(e) 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;

(f) Sales of property or services to corporations or
organizations qualified under section 501(c)(3) of the
Internal Revenue Code of 1986, as amended, or under
section 501(c)(4) of the Internal Revenue Code of 1986,
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 in the activities for
which such organizations qualify as tax exempt organ-
ization under the Internal Revenue Code by these
organizations and shall not apply to purchases of
gasoline or special fuel;

(g) Sales of property or services to persons engaged
in this state in the business of contracting, manufactur-
ing, 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: Provided, however, That on and after the
first day of July, one thousand nine hundred eighty-
seven, the exemption provided in this subsection shall
apply only to services, machinery, supplies and mate-
rials directly used or consumed in the activities of
contracting, manufacturing, transportation, transmis-
sion, communication or the production of natural
resources in the businesses or organizations named
above and shall not apply to purchases of gasoline or
special fuel;
(h) 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;

(i) Sales of tangible personal property and services rendered for use or consumption in connection with the business of selling tangible personal property 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: Provided, however, That materials and services whereby a tax has been paid by a contractor may be deducted when their services and tangible personal property are used or consumed in the construction of or permanent improvements to real property of retailers or commercial producers of agricultural products: Provided further, That on and after the first day of July, one thousand nine hundred eighty-seven, the exemption provided in this subsection shall apply only to sales of tangible personal property or service used or consumed in connection with the commercial production of an agricultural product or the business of dispensing a service subject to the tax under this article or which would be subject to tax under this article but for the exemption for food in section eleven of this article;

(j) 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;

(k) 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;

(l) 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;

(m) Sales of newspapers when delivered to consumers by route carriers;

(n) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(o) Sales of radio and television broadcasting time, preprinted advertising circulars, and newspaper and outdoor advertising space for the advertisement of goods or services;

(p) Sales and services performed by day care centers;

(q) 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 1986, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1986, as amended;

(r) 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 1986, as amended: Provided, That sales of gasoline and special fuel shall be taxable;

(s) 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;

(t) 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;

(u) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. 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;

(v) Notwithstanding any provisions in this section to the contrary, sales of property and services to persons subject to tax under article thirteen, thirteen-a or thirteen-b of this chapter: Provided, That the exemption herein granted shall apply only to property or services used or consumed in activities gross receipts from which are subject to tax under such articles and shall not apply to purchases of gasoline or special fuel;

(w) Sales of propane to consumers for poultry house heating purposes, with any seller to such consumer who may have prior paid such tax in his price, to not pass on the same to the consumer, but to make application and receive refund of such tax from the tax commissioner, pursuant to rules and regulations which shall be promulgated by the tax commissioner; and notwithstanding the provisions of section eighteen of this article or any other provisions of such article to the contrary;

(x) Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in United States Code, 2011, et seq., as amended;
(y) Sales of tickets for activities sponsored by elementary and secondary schools located within this state; and

(z) Sales of electronic data processing services and related software: Provided, That for the purposes of this subsection (z) "electronic data processing services" means (1) the processing of another's data, including all processes incident to processing of data such as key-punching, keystroke verification, rearranging, or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (2) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment.

§11-15-9b. Method for claiming exemptions, refunds of tax, credit against other taxes.

(a) Any person having a right or claim to any exemption set forth in section nine of this article except those exemptions set forth in subsections (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s), (t), (u), (x) and (y) of said section nine or the exemption of sales of property or services to churches under subsection (e) of said section nine shall pay to the vendor the tax imposed by this article and may exercise or assert such exemption only in accordance with subsection (b) or subsection (c) of this section.

(b) Any person who has paid the tax imposed by this article and who may lawfully claim exemption from the tax under a subsection of section nine of this article not enumerated in subsection (a) of this section may exercise or assert such claim by filing a claim for refund of consumers sales and service tax overpayments on such form and in such manner as the tax commissioner may require and in accordance with the requirements of this section. The tax commissioner shall cause a refund to be made within thirty days of receipt of a lawful and accurate claim.

(c) In lieu of filing a claim for refund of consumers sales and service tax overpayments, the taxpayer may,

*Clerk's Note: This section was also amended by S. B. 760, which passed subsequent to this act.
(c) In lieu of filing a claim for refund of consumers sales and service tax overpayments, the taxpayer may, at his option, file a claim for credit on such form and in such manner as the tax commissioner may require and credit the amount of consumers sales and service tax overpayments against certain payments of tax due in accordance with the requirements of this section as follows:

(1) If the taxpayer is subject to the tax imposed under article thirteen of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen otherwise due; or

(2) If the taxpayer is subject to the tax imposed under article twelve-a of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of part (1) of this subsection against the taxpayer's annual or semiannual remittance of the tax imposed under said article twelve-a otherwise due; or

(3) If the taxpayer is subject to the tax imposed under article thirteen-a of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1) and (2) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen-a otherwise due; or

(4) If the taxpayer is subject to the tax imposed under article thirteen-b of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2) and (3) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen-b otherwise due; or

(5) If the taxpayer is subject to the tax imposed under article twenty-four of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3) and (4) of this subsection against the taxpayer's installment of estimated tax imposed under said article
TAXATION

(6) If the taxpayer is subject to the tax imposed under article twenty-one of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4) and (5) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-one and otherwise due under section fifty-six, article twenty-one of this chapter; or

(7) If the taxpayer is subject to the tax imposed under article twenty-three of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5) and (6) of this subsection against the taxpayer's annual remittance of the tax imposed under said article twenty-three and otherwise due; or

(8) If the taxpayer is required to deduct and withhold tax under article twenty-one of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6) and (7) of this subsection against the taxpayer's monthly remittance of the tax withheld under said article twenty-one and otherwise due.

(d) Any person asserting or exercising a claim of exemption from the tax imposed by this article under subsection (b) or (c) of this section shall file with the tax commissioner an application for exemption in such form as the tax commissioner shall prescribe and such affidavits, invoices, sales slips, records or documents as the tax commissioner may require to prove or verify the taxpayer's right and entitlement to such exemption. The tax commissioner may inspect or examine the records, books, papers, documents, affidavits, sales slips and invoices of a taxpayer or any other person to verify the truth and accuracy of any report or return or to ascertain whether the tax imposed by this article has been paid.

In addition to the powers of the tax commissioner set forth in article ten of this chapter, as a further means
of obtaining the records, books, papers, documents, affidavits, sales slips or invoices of a taxpayer or any other person and ascertaining the amount of taxes paid or due under this article or any report, form, document or affidavit required under this article, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records, papers, documents, affidavits, sales slips or invoices requested by the commissioner, the commissioner shall certify the facts and the names to the circuit court of the county having jurisdiction over the party and such court shall thereupon issue a subpoena duces tecum to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed.

(e) All claims for refund of consumers sales and service tax overpayments under subsection (b) of this section shall be filed within the time limitation for filing claims for refund set forth in section fourteen, article ten of this chapter. Any claim for such refund or claim of entitlement to such refund made or asserted after the said time limitation shall be null and void, and if the consumers sales and service tax overpayment has not otherwise been credited against tax remittances in accordance with this section, the said claims shall be forfeited.

(f) Any credit of consumers sales and service tax overpayments against taxes under subsection (c) of this section shall be taken within one year after the payment of the said consumers sales and service tax by the consumer to the vendor. Any such credit or claim of entitlement to such credit made or asserted more than one year after the payment of such tax by the consumer to the vendor shall be null and void, and such consumers sales and service tax overpayments shall be forfeited unless refunded under subsection (b) of this section.

(g) Any assignment of the right or entitlement to a refund or credit arising under this section shall be subject to strict proof, and any assignee claiming a right or entitlement to an assigned refund or credit shall
submit an affidavit in such form as the tax commis-

sioner shall prescribe signed by the assignor acknowl-
edging the assignment. The assignee shall attest to the
assignment and the terms thereof on his signed appli-
cation filed under subsection (d) of this section for
refund or credit, and will be subject to the penalties
provided under West Virginia law for perjury for any
falsehood set forth therein and will be subject to the
penalties set forth in article nine of this chapter for any
violation thereof. Except as provided in this subsection
(g), no payment of a refund arising under this section
shall be made to any person other than the taxpayer
making the original overpayment of consumers sales
and service tax.

(h) No refund shall be due and no credit shall be
allowed under this section unless the taxpayer or
assignee shall have filed a claim for refund or a claim
for credit, as appropriate, with the tax commissioner in
accordance with this section.

(i) Any claim for a refund of consumers sales and
service tax overpayments or for a tax credit for
consumers sales and service tax overpayments which is
not timely filed or not filed in proper form or in
accordance with the requirements of this section shall
not be construed to constitute a moral obligation of the
state of West Virginia for payment. No overpayment of
consumers sales and service tax made under this section
shall be subject to subsection (d), section seventeen,
article ten of this chapter or subdivision (1), subsection
(e), section seventeen, article ten of this chapter.

(j) The provisions of this section become effective after
the thirtieth day of June, one thousand nine hundred
eighty-seven.

*§11-15-9c. Delivery of a certificate of exemption in lieu
of tax.

Persons having a right to exemption set forth in
subsections (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s),
(t), (u), (x) and (y) shall, in lieu of paying the tax imposed
by this article, execute a certificate of exemption in such
form as the tax commissioner may require, and such

* Clerk's Note: This section was also amended by S. B. 760, which passed subsequent to this act.
executed exemption certificate shall be delivered to the vendor in such manner as the tax commissioner may require.

§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner may, in his discretion, authorize a person (as defined in section two) that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided to pay any tax levied by this article or article fifteen-a of this chapter directly to the tax commissioner and waive the collection of the tax by that person's vendor. No such authority shall be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit for purchases made from the vendor or vendors specified therein. If a direct pay permit is issued, then payment of the tax imposed by this article or article fifteen-a of this chapter on all sales and leases of tangible personal property and sales of taxable services from designated vendors shall be made directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of tax due from the permit holder, which amount shall be paid to the tax commissioner with such return, and such other information as the tax commissioner deems necessary. The tax commissioner, upon written request by the permit holder, may grant a reasonable extension of time for the making and filing of returns and paying the tax. Interest on such tax shall be chargeable on every such extended payment at the rate determined in accordance with section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section shall

*Clerk's Note: This section was also amended by S. B. 760, which passed subsequent to this act.
continue to be valid until expiration of the business's registration year under article twelve of this chapter. This permit shall automatically be renewed when the business's business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has not been canceled shall not be required to pay the tax to the vendor as otherwise provided in this article or article fifteen-a of this chapter. Such persons shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of such notice, such vendor shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases or storage of tangible personal property and sales of services to such permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each such purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held such permit, and such person shall promptly so notify in writing vendors from whom purchases, leases and storage of tangible personal property are made of such cancellation or surrender. Upon receipt of such notice, the vendor shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases or storage of tangible personal property, thereafter made to or for such person.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; rate; inclusion of service as taxable on and after the first day of July, one thousand nine hundred eighty-seven.

§11-15A-2. Imposition of tax; rate; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven.

(a) An excise tax is hereby levied and imposed on the use in this state of tangible personal property or taxable services, to be collected and paid as hereinafter provided, at the rate of five percent of the purchase price of such property or taxable services. "Taxable services," for the purposes of this article, means services of the nature that are subject to the tax imposed by article fifteen of this chapter. In this article, wherever the words "tangible personal property" or "property" appear, the same shall include the words "or taxable services," where the context so requires.

(b) Such tax is hereby imposed upon every person using tangible personal property or taxable services within this state. That person's liability is not extinguished until such tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in this state, or by a foreign retailer who is authorized by the tax commissioner to collect the tax imposed by this article, relieves the purchaser from further liability for the tax to which the receipt refers.

(c) Purchases of tangible personal property or taxable services made from the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the state of West Virginia of a character not ordinarily readily obtainable within the state, shall not be subject to use tax when sold, if such industrial materials and equipment would not be subject to use taxes if such were sold outside of the state for use in West Virginia.

(d) This article shall not apply to purchases made by counties or municipal corporations.

1. (a) The use in this state of the following tangible personal property and services is hereby specifically exempted from the tax imposed by this article to the extent specified:

   1. All articles of tangible personal property brought into the state of West Virginia by a nonresident individual thereof for his or her use or enjoyment while temporarily within this state or while passing through this state, except gasoline and special fuel: Provided, That fuel contained in the supply tank of a motor vehicle that is not a motor carrier shall not be taxable.

   2. Tangible personal property or services, the gross receipts from the sale of which are exempt from the sales tax by the terms of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and the property or services are being used for the purpose for which it was exempted.

   3. Tangible personal property, the gross receipts from the sale of which are derived from the sale of machinery, supplies and materials to contractors, or to persons engaged in the business of manufacturing, transportation, transmission, communication or in the production of natural resources in this state: Provided, That purchases of gasoline or special fuel from distributors or importers shall be taxable: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-seven, the full or partial exemption as provided in this subsection and to persons engaged in the businesses specified herein or to the other businesses or organizations as specified in section nine, article fifteen of this chapter, and in respect of tangible personal property or services, provided for in such latter section, shall be the same, and shall not apply to purchases of gasoline or special fuel.

   4. Tangible personal property or services, the gross
receipts or the gross proceeds from the sale of which are
required to be included in the measure of the tax
imposed by article fifteen, chapter eleven of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, and upon which the tax imposed by said
article fifteen has been paid.

(5) Tangible personal property or services, the sale of
which in this state is not subject to the West Virginia
consumers sales tax.

(6) Mobile homes utilized by the owners thereof as
their principal year-round residence and dwelling:
Provided, That use of these mobile homes shall be
subject to tax at the three percent rate.

(b) The provisions of this section, as amended, shall
apply on and after the first day of July, one thousand
nine hundred eighty-seven.

*§11-15A-3b. Method for claiming exemptions, refunds of
tax, credit against other taxes.*

(a) Any person having a right or claim to an exemp-
tion from the tax imposed by this article by reason of
any exemption set forth in section nine, article fifteen
of this chapter except those exemptions set forth in
subsections (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s),
(t), (u), (x) and (y) of said section nine shall pay to the
vendor the tax imposed by this article and may exercise
or assert such exemption only in accordance with
subsection (b) or subsection (c) of this section.

(b) Any person who has paid the tax imposed by this
article and who may lawfully claim under section three
of this article any exemption set forth under a subsec-
tion of section nine of article fifteen not enumerated in
subsection (a) of this section may exercise or assert such
claim by filing a claim for refund of use tax overpay-
ments on such form and in such manner as the tax
commissioner may require and in accordance with the
requirements of this section.

(c) In lieu of filing a claim for refund of use tax
overpayments, the taxpayer may, at his option, file a
claim for credit on such form and in such manner as

*Clerk's Note: This section was also amended by S. B. 760, which passed
subsequent to this act.*
the tax commissioner may require and credit the amount of use tax overpayments against certain payments of tax due in accordance with the requirements of this section as follows:

(1) If the taxpayer is subject to the tax imposed under article thirteen of this chapter, the taxpayer may credit the amount of use tax overpayments against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen otherwise due; or

(2) If the taxpayer is subject to the tax imposed under article twelve-a of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of part (1) of this subsection against the taxpayer's annual or semiannual remittance of the tax imposed under said article twelve-a otherwise due; or

(3) If the taxpayer is subject to the tax imposed under article thirteen-a of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1) and (2) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen-a otherwise due; or

(4) If the taxpayer is subject to the tax imposed under article thirteen-b of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2) and (3) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen-b otherwise due; or

(5) If the taxpayer is subject to the tax imposed under article twenty-four of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3) and (4) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-four and otherwise due under section seventeen, article twenty-four of this chapter; or

(6) If the taxpayer is subject to the tax imposed under article twenty-one of this chapter, the taxpayer may
credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4) and (5) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-one and otherwise due under section fifty-six, article twenty-one of this chapter; or

(7) If the taxpayer is subject to the tax imposed under article twenty-three of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4), (5) and (6) of this subsection against the taxpayer's annual remittance of the tax imposed under said article twenty-three and otherwise due; or

(8) If the taxpayer is required to deduct and withhold tax under article twenty-one of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6) and (7) of this subsection against the taxpayer's monthly remittance of the tax withheld under said article twenty-one and otherwise due.

(d) Any person asserting or exercising a claim of exemption from the tax imposed by this article under subsection (b) or (c) of this section shall file with the tax commissioner an application for exemption in such form as the tax commissioner shall prescribe and such affidavits, invoices, sales slips, records or documents as the tax commissioner may require to prove or verify the taxpayer's right and entitlement to such exemption. The tax commissioner may inspect or examine the records, books, papers, documents, affidavits, sales slips and invoices of a taxpayer or any other person to verify the truth and accuracy of any report or return or to ascertain whether the tax imposed by this article or article fifteen of this chapter has been paid.

In addition to the powers of the tax commissioner set forth in article ten of this chapter, as a further means of obtaining the records, books, papers, documents, affidavits, sales slips or invoices of a taxpayer or any other person and ascertaining the amount of taxes paid or due under this article or article fifteen of this chapter
or any report, form, document or affidavit required under this article or article fifteen of this chapter, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records, papers, documents, affidavits, sales slips or invoices requested by the commissioner, the commissioner shall certify the facts and the names to the circuit court of the county having jurisdiction of the party, and such court shall thereupon issue a subpoena duces tecum to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed.

(e) All claims for refund of use tax overpayments under subsection (b) of this section shall be filed within the time limitation for filing claims for refund set forth in section fourteen, article ten of this chapter. Any claim for such refund or claim of entitlement to such refund made or asserted after the said time limitation shall be null and void, and if the use tax overpayment has not otherwise been credited against tax remittances in accordance with this section, the said claims shall be forfeited.

(f) Any credit of use tax overpayments against taxes under subsection (c) of this section shall be taken within one year after the payment of the tax by the taxpayer to the vendor. Any such credit or claim of entitlement to such credit made or asserted more than one year after the payment of such tax by the taxpayer to the vendor shall be null and void, and such tax overpayments shall be forfeited.

(g) Any assignment of the right or entitlement to a refund or credit arising under this section shall be subject to strict proof, and any assignee claiming a right or entitlement to an assigned refund or credit shall submit an affidavit in such form as the tax commissioner shall prescribe signed by the assignor acknowledging the assignment. The assignee shall attest to the assignment and the terms thereof of his signed application filed under subsection (e) of this section for refund or credit, and will be subject to the penalties
provided under West Virginia law for perjury for any falsehood set forth therein and will be subject to the penalties set forth in article nine of this chapter for any violation thereof. Except as provided in this subsection (h), no payment of a refund arising under this section shall be made to any person other than the taxpayer making the original overpayment of consumers sales and service tax.

(h) No refund shall be due and no credit shall be allowed unless the taxpayer or assignee shall have filed a claim for refund or a claim for credit, as appropriate, with the tax commissioner in accordance with this section.

(i) Any claim for a refund of use tax overpayments or a tax credit for use tax overpayments which is not timely filed or not filed in proper form or in accordance with the requirements of this section shall not be construed to constitute a moral obligation of the state of West Virginia for payment. No overpayment of use tax made under this section shall be subject to subsection (d), section seventeen, article ten of this chapter, or subdivision (1), subsection (e), section seventeen, article ten of this chapter.

(j) The provisions of this section become effective after the thirtieth day of June, one thousand nine hundred eighty-seven.

*§11-15A-3c. Delivery of a certificate of exemption in lieu of tax.*

Persons having a right or claim under section three of this article, to any exemption set forth in subsections (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s), (t), (u), (x) and (y), section nine, article fifteen of this chapter shall, in lieu of paying the tax imposed by this article, execute a certificate of exemption in such form as the tax commissioner may require, and such executed exemption certificate shall be delivered to the vendor in such manner as the tax commissioner may require.

*§11-15A-3d. Direct pay permits.*

(a) Notwithstanding any other provision of this

*Clerk's Note: These sections were also amended by S. B. 760, which passed subsequent to this act.*
article, the tax commissioner may, in his discretion, authorize a person (as defined in section two of article fifteen) that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided to pay any tax levied by this article or article fifteen of this chapter directly to the tax commissioner and waive the collection of the tax by that person's vendor. No such authority shall be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit for purchases made from the vendor or vendors specified therein. If a direct pay permit is issued, then payment of the tax imposed by this article or article fifteen of this chapter on all sales and leases of tangible personal property and sales of taxable services from designated vendors shall be made directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of tax due from the permit holder, which amount shall be paid to the tax commissioner with such return, and such other information as the tax commissioner deems necessary. The tax commissioner, upon written request by the permit holder, may grant a reasonable extension of time for the making and filing of returns and paying the tax. Interest on such tax shall be chargeable on every such extended payment at the rate determined in accordance with section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section shall continue to be valid until expiration of the business's registration year under article twelve of this chapter. This permit shall automatically be renewed when the business's business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.
(d) Persons who hold a direct payment permit which has not been canceled shall not be required to pay the tax to the vendor as otherwise provided in this article or article fifteen of this chapter. Such persons shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of such notice, such vendor shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases or storage of tangible personal property and sales of services to such permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each such purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held such permit, and such person shall promptly so notify in writing vendors from whom purchases, leases and storage of tangible personal property are made of such cancellation or surrender. Upon receipt of such notice, the vendor shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases or storage of tangible personal property, thereafter made to or for such person.

§11-15A-18. Seller must show sale not at retail; presumption.

The burden of proving that a sale was not taxable shall be upon the seller, unless, for sales subject to section three-c of this article, he, in good faith, takes from the purchaser a certificate signed by and bearing the address of the purchaser setting forth the reason for exemption of the sale from imposition of the tax. To prevent evasion it shall be presumed that all proceeds are subject to the tax until the contrary is clearly
established. This certificate shall be substantially in the form prescribed by the tax commissioner.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4e. Rate of tax—Taxable periods beginning on or after January 1, 1987.

§11-21-4f. Effect of rate changes during taxable year.


§11-21-11. West Virginia taxable income of resident individual.

§11-21-12. West Virginia adjusted gross income of resident individual.

§11-21-13. West Virginia deduction of resident individual.

§11-21-14. West Virginia standard deduction of a resident individual.

§11-21-15. West Virginia itemized deduction of a resident individual.

§11-21-16. West Virginia personal exemptions of resident individual.

§11-21-31. West Virginia taxable income of nonresident individual.

§11-21-32. West Virginia adjusted gross income of a nonresident individual.

§11-21-33. West Virginia deduction of a nonresident individual.

§11-21-34. West Virginia standard deduction of a nonresident individual.

§11-21-35. West Virginia itemized deduction of a nonresident individual.

§11-21-43. Credit for consumers sales and service tax and use tax paid.

§11-21-51. Returns and liabilities.

§11-21-74. Employer's return and payment of withheld taxes.

*§11-21-4e. Rate of tax — Taxable periods beginning on or after January 1, 1987.

(a) Rate of tax on individuals filing joint returns or individual returns, estates or trusts. — The tax imposed by section three of this article on the West Virginia taxable income shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>West Virginia taxable income is:</th>
<th>The tax is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $10,000</td>
<td>3% of the taxable income</td>
</tr>
<tr>
<td>Over $10,000 but not over $25,000</td>
<td>$300.00 plus 4% of excess over $10,000</td>
</tr>
<tr>
<td>Over $25,000 but not over $40,000</td>
<td>$900.00 plus 5% of excess over $25,000</td>
</tr>
<tr>
<td>Over $40,000 but not over $60,000</td>
<td>$1650.00 plus 6% of excess over $40,000</td>
</tr>
<tr>
<td>Over $60,000</td>
<td>$2850.00 plus 6.5% of excess over $60,000</td>
</tr>
</tbody>
</table>

(b) Applicability of this section.— The provisions of this section shall be applicable in determining the rate of tax imposed by this article for all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

*Clerk's Note: This section was also amended by H. B. 3204, which passed subsequent to this act.
§11-21-4f. Effect of rate changes during taxable year.

(a) If any rate of tax imposed by this article changes to become effective after the thirty-first day of December, of a calendar year, and if the taxable year includes the effective date of the change of rate (unless that date is the first day of the taxable year) then: (1) Tentative taxes shall be computed by applying the rate for the period before the effective date of the change of rate, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and (2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of months in each period bears to the number of months in the entire taxable year.

(b) For purposes of subsection (a):

(1) If the rate changes for taxable years "beginning after" or "ending after" a certain date, the following day shall be considered the effective date of the change; and

(2) If a rate changes for taxable years "beginning on or after" a certain date, that date shall be considered the effective date of the change of rate.


Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, 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-seven, shall be given effect in determining the taxes imposed by this article for any taxable year beginning the first day of January, one thousand nine hundred eighty-six, or thereafter, but no amendment to the laws of the United States made on or after the first
17 day of January, one thousand nine hundred eighty-seven, shall be given effect.

*§11-21-11. West Virginia taxable income of resident individual.

(a) **General.** — The West Virginia taxable income of a resident individual shall be his West Virginia adjusted gross income less his West Virginia personal exemptions, as determined under this part.

(b) **Husband and wife.** — (1) If the federal taxable income of husband or wife is determined on a separate federal return, their West Virginia taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

(A) Their tax shall be determined on their joint West Virginia taxable income, or

(B) Separate taxes may be determined on their separate West Virginia taxable incomes if they so elect and if they comply with the requirements of the tax commissioner in setting forth information on a single form: *Provided, That the election allowed in subparagraph (B) shall not be available for a husband and wife for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.*

(3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the tax commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

(c) **Effective date.** — This section, as amended, shall apply to all taxable years after the thirty-first day of December, one thousand nine hundred eighty-six.

*§11-21-12. West Virginia adjusted gross income of resident individual.

(a) **General.** — The West Virginia adjusted gross income of a resident individual shall be his West Virginia adjusted gross income less his West Virginia personal exemptions, as determined under this part.
income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income unless already included therein the following items, except that modifications (5), (6) and (7) shall be required only with respect to tax periods ending on or after the first day of January, one thousand nine hundred eighty-two:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumental-ity of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax: Provided, That this modifi-cation shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount allowed as a deduction from federal gross income under section 221 of the Internal Revenue Code by married couples who file a joint federal return
for the federal taxable year: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and

(7) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal adjusted gross income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: Three-year property—no modification; five-year property—ten percent; ten-year property—fifteen percent; fifteen-year public utility property—twenty-five percent; and fifteen-year real property—thirty-five percent: Provided, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumental-ity of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, including federal interest dividends paid to shareholders of a regulated investment company, under section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven;

(3) Any gain from the sale or other disposition of
81 property having a higher fair market value on the first
day of January, one thousand nine hundred sixty-one,
83 than the adjusted basis at said date for federal income
tax purposes: Provided, That the amount of this
85 adjustment is limited to that portion of any such gain
86 which does not exceed the difference between such fair
market value and such adjusted basis: Provided,
however, That if such gain is considered a long-term
capital gain for federal income tax purposes, the
modification shall be limited to forty percent of such
portion of the gain: Provided further, That this modifi-
cation shall not be made for taxable years beginning
after the thirty-first day of December, one thousand nine
94 hundred eighty-six;

(4) The amount of any refund or credit for overpay-
ment of income taxes imposed by this state, or any other
taxing jurisdiction, to the extent properly included in
gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of
contributions and any other benefit received under the
public employees retirement system, the department of
public safety death, disability and retirement fund, the
state teachers retirement system and all forms of
military retirement, including regular armed forces,
reserves and national guard, including any survivorship
annuities derived therefrom, to the extent includible in
gross income for federal income tax purposes: Provided,
That notwithstanding any provisions in this code to the
contrary this modification shall be limited to the first
two thousand dollars of benefits received under the
public employees retirement system, the state teachers
retirement system and all forms of military retirement
including regular armed forces, reserves and national
guard for taxable years beginning after the thirty-first
day of December, one thousand nine hundred eighty-six;

(6) Retirement income received in the form of pen-
sions and annuities after the thirty-first day of De-
cember, one thousand nine hundred seventy-nine, under
any police or firemen's retirement system, including any
survivorship annuities derived therefrom, to the extent
(7) Federal adjusted gross income in the amount of six thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That

(i) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision, and

(ii) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of modifications under such subdivisions;

(8) Federal adjusted gross income in the amount of six thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision, and
(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of such subdivisions;

(9) Any pay or allowances received, after the thirty-first day of December, one thousand nine hundred seventy-nine, by West Virginia residents who have not attained the age of sixty-five, as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(10) Gross income to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code for federal income tax purposes: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(11) The amount of any lottery prize awarded by the West Virginia state lottery commission, to the extent properly included in gross income for federal income tax purposes; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States.

d Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

e Partners. — The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen of this article.
(f) *Husband and wife.* — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

§11-21-13. West Virginia deduction of resident individual.

The West Virginia deduction of a resident individual shall be his West Virginia standard deduction unless he elects to deduct his West Virginia itemized deduction under the conditions set forth in section fifteen: Provided, That no West Virginia deduction shall be allowed for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§11-21-14. West Virginia standard deduction of a resident individual.

(a) *General.* — The West Virginia standard deduction of a resident individual, or of husband and wife whose West Virginia taxable income is determined jointly, shall be ten per centum of West Virginia adjusted gross income or one thousand dollars, whichever is less.

(b) *Husband and wife determining income separately.* — The West Virginia standard deductions of husband and wife whose West Virginia taxable incomes are determined separately (whether or not on a single form) shall not exceed ten per centum of the aggregate of their separate West Virginia adjusted gross incomes or one thousand dollars, whichever is less, but may be taken by either or divided between them in such proportions as they may elect.

(c) *Expiration.* — The West Virginia standard deduction provided in this section shall not apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§11-21-15. West Virginia itemized deduction of a resident individual.

(a) *General.* — If federal taxable income of a resident
individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his West Virginia itemized deduction in lieu of his West Virginia standard deduction. The West Virginia itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Husband and wife. — (1) A husband and wife, both of whom are required to file returns under this article, shall be allowed West Virginia itemized deductions only if both elect to take West Virginia itemized deductions.

(2) The total of the West Virginia itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose West Virginia taxable incomes are determined separately, may be taken by either or divided between them in such proportions as they may elect.

(c) Modifications reducing federal itemized deductions. — The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(1) Income taxes imposed by this state or any other taxing jurisdiction; and

(2) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article.

(d) Partners. — The amounts of modifications under subsection (c) required to be made by a partner with respect to items of deduction of a partnership shall be determined under section seventeen.

(e) Expiration. — The West Virginia itemized deduction provided in this section shall not apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.
§11-21-16. West Virginia personal exemptions of resident individual.

(a) General. — For any tax imposed under the provisions of this article with respect to any taxable year prior to the first day of January, one thousand nine hundred eighty-three, a resident individual shall be allowed a West Virginia exemption of six hundred dollars for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes. With respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-three, and prior to the first day of January, one thousand nine hundred eighty-four, said exemption shall be seven hundred dollars; with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-four, said exemption shall be eight hundred dollars; and with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-seven, said exemption shall be two thousand dollars.

(b) Husband and wife. — If the West Virginia income taxes of a husband and wife are separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled, with respect to any taxable year prior to the first day of January, one thousand nine hundred eighty-three, to a West Virginia exemption of six hundred dollars for each federal exemption to which he would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns. With respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-three, and prior to the first day of January, one thousand nine hundred eighty-four, said exemption shall be seven hundred dollars; with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-four, said exemption shall be eight hundred dollars; and with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-seven, said exemption shall be two thousand dollars.
(c) Surviving spouse. — For taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six, a surviving spouse shall be allowed one additional exemption for the two taxable years beginning after the year of death of the deceased spouse.

§11-21-31. West Virginia taxable income of nonresident individual.

1 (a) General. — The West Virginia taxable income of a nonresident individual shall be his West Virginia adjusted gross income less his West Virginia personal exemptions, as determined under this part.

(b) Husband and wife. — (1) If the federal taxable income of husband or wife, both of whom are nonresidents, is determined on a separate federal return, their West Virginia taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife, both of whom are nonresidents, is determined on a joint federal return, or if neither files a federal return:

(A) Their tax shall be determined on their joint West Virginia taxable income, or

(B) Separate taxes may be determined on their separate West Virginia taxable incomes if they so elect and if they comply with the requirements of the tax commissioner in setting forth information on a single form.

(3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the tax commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

(c) Effective date.— This section, as amended, shall apply to all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§11-21-32. West Virginia adjusted gross income of a nonresident individual.

1 (a) General. — The West Virginia adjusted gross
income of a nonresident individual shall be the sum of
the following:

(1) The net amount of items of income, gain, loss and
deduction entering into his federal adjusted gross
income, as defined in the laws of the United States for
the taxable year, derived from or connected with West
Virginia sources, including:

(A) His distributive share of partnership income,
gain, loss and deduction, determined under section
thirty-seven; and

(B) His share of estate or trust income, gain, loss and
deduction, determined under section thirty-nine; and

(2) The portion of the modifications described in
subsections (b) and (c) of section twelve which relate to
income derived from West Virginia sources (including
any modifications attributable to him as a partner).

(b) Income and deductions from West Virginia sources.
— (1) Items of income, gain, loss and deduction derived
from or connected with West Virginia sources shall be
those items attributable to:

(A) The ownership of any interest in real or tangible
personal property in this state; or

(B) A business, trade, profession or occupation carried
on in this state.

(2) Income from intangible personal property, includ-
ing annuities, dividends, interest and gains from the
disposition of intangible personal property, shall
constitute income derived from West Virginia sources
only to the extent that such income is from property
employed in a business, trade, profession or occupation
carried on in this state.

(3) Deductions with respect to capital losses, net long-
term capital gains and net operating losses shall be
based solely on income, gain, loss and deduction derived
from or connected with West Virginia sources, under
regulations of the tax commissioner, but otherwise shall
be determined in the same manner as the corresponding
federal deductions.
(c) Income and deductions partly from West Virginia sources. — If a business, trade, profession or occupation is carried on partly within and partly without this state, as determined under regulations of the tax commissioner, the items of income, gain, loss and deduction derived from or connected with West Virginia sources shall be determined by apportionment and allocation under such regulation.

(d) Purchase and sale for own account. — A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed to carry on a business, trade, profession or occupation in this state solely by reason of the purchase and sale of property for his own account.

(e) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

§11-21-33. West Virginia deduction of a nonresident individual.

The West Virginia deduction of a nonresident individual shall be his West Virginia standard deduction unless he elects to deduct his West Virginia itemized deduction under the conditions set forth in section thirty-five: Provided, That no West Virginia deduction shall be allowed for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§11-21-34. West Virginia standard deduction of a nonresident individual.

The West Virginia standard deduction of a nonresident individual shall be ten per centum of his West Virginia adjusted gross income, or one thousand dollars, whichever is less. The West Virginia standard deduction of a nonresident husband or wife shall be determined under the rules of section fourteen: Provided, That no
West Virginia standard deduction shall be allowed for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§11-21-35. West Virginia itemized deduction of a nonresident individual.

(a) General. — If federal taxable income of a nonresident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his West Virginia itemized deduction in lieu of his West Virginia standard deduction. The West Virginia itemized deduction of a nonresident individual shall be the same as the total amount of the following of his deductions from federal adjusted gross income, as provided in the laws of the United States for the taxable year (including any items attributable to him as a partner):

(1) Deductions for contributions or gifts to this state or to any political subdivision thereof, or to any corporation, trust, community chest, fund, foundation or other entity organized or operated under the laws of this state;

(2) Deductions for alimony or separate maintenance payments includible in the West Virginia adjusted gross income of the recipient;

(3) Deductions for losses of real or tangible personal property having an actual situs in this state, arising from fire, storm, shipwreck or other casualty, or from theft;

(4) Deductions, with respect to real or tangible personal property having an actual situs in this state, for losses (other than capital losses) incurred in any transaction entered into for profit but not connected with the taxpayer’s trade or business; and

(5) Deductions determined under regulations of the tax commissioner to be connected with his West Virginia adjusted gross income, except deductions for income taxes imposed by this state or any other taxing jurisdiction.
(b) **Husband and wife.** — (1) A husband and wife, both of whom are required to file returns under this article, shall be allowed West Virginia itemized deductions only if both elect to take West Virginia itemized deductions.

(2) The total of the West Virginia itemized deductions of a husband and wife whose federal taxable income is determined on a joint return but whose West Virginia taxable incomes are determined separately may be taken by either or divided between them as they may elect.

(c) **Expiration.** — The West Virginia itemized deduction provided in this section shall not apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§11-21-43. Credit for consumers sales and service tax and use tax paid.

The tax imposed by this article shall be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.

*§11-21-51. Returns and liabilities.*

(a) **General.** — On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this article shall be made and filed by or for:

(1) Every resident individual required to file a federal income tax return for the taxable year, or having West Virginia adjusted gross income for the taxable year, determined under section twelve in excess of the sum of his West Virginia personal exemptions;

(2) Every resident estate or trust required to file a federal income tax return for the taxable year, or having any West Virginia taxable income for the taxable year, determined under section eighteen;

(3) Every nonresident individual having any West Virginia adjusted gross income for the taxable year, determined under section thirty-two, in excess of the sum of his West Virginia personal exemptions; and

*Clerk's Note: This section was also amended by H. B. 3204, which passed subsequent to this act.*
(4) Every nonresident estate or trust having items of income or gain derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual, in excess of its West Virginia exemption.

(b) Husband and wife. — (1) If the federal income tax liability of husband or wife is determined on a separate federal return, their West Virginia income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife other than a husband and wife described in subdivision (3) of this subsection (b) are determined on a joint federal return, or if neither files a federal return:

(A) They shall file a joint West Virginia income tax return, and their tax liabilities shall be joint and several, or

(B) They may elect to file separate West Virginia income tax returns on a single form if they comply with the requirements of the tax commissioner in setting forth information, and in such event their tax liabilities shall be separate: Provided, That the election allowed in this subparagraph (B) shall not be available for a husband and wife for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

(3) If either husband or wife is a resident and the other is a nonresident, they shall file separate West Virginia income tax returns on such single or separate forms as may be required by the tax commissioner, and in such event their tax liabilities shall be separate.

(c) Decedents. — The return for any deceased individual shall be made and filed by his executor, administrator or other person charged with his property.

(d) Individuals under a disability. — The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other
than a receiver in possession of only a part of his
property), or by his duly authorized agent.

(e) Estates and trusts. — The return for an estate or
trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries. — If two or more fiduciaries are
acting jointly, the return may be made by any one of
them.

(g) Tax a debt. — Any tax under this article, and any
increase, interest or penalty thereon, shall, from the
time it is due and payable, be a personal debt of the
person liable to pay the same, to the state of West
Virginia.

(h) Cross reference. — For provisions as to information
returns by partnerships, employers and other persons,
see section fifty-eight.

§11-21-74. Employer’s return and payment of withheld
taxes.

(a) General. — Every employer required to deduct
and withhold tax under this article shall, for each
calendar quarter, on or before the last day of the month
following the close of such calendar quarter, file a
withholding return as prescribed by the tax commis-
sioner and pay over to the tax commissioner the taxes
so required to be deducted and withheld. Where the
aggregate amount so deducted and withheld by any
employer is less than twenty-five dollars in a calendar
quarter and the aggregate for the calendar year can
reasonably be expected to be less than one hundred
dollars, the tax commissioner may by regulation permit
an employer to file an annual return and pay over to
the tax commissioner the taxes deducted and withheld
on or before the last day of the month following the close
of such calendar year. The tax commissioner may, if he
believes such action necessary for the protection of the
revenues, require any employer to make such return and
pay to him the tax deducted and withheld at any time,
or from time to time.

(b) Monthly returns and payments of withheld tax for
April and May, 1971. — Notwithstanding the provisions
of subsection (a), in the case of each of the months of
April and May, one thousand nine hundred seventy-one, every employer required to deduct and withhold tax under this article, except any employer with respect to whom the tax commissioner may have by regulation provided otherwise in accordance with the provisions of subsection (a), shall, for the months of April and May, one thousand nine hundred seventy-one, file a withholding return for each of such months as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld for each of such months by the twentieth day of June, one thousand nine hundred seventy-one.

(c) Monthly returns and payments of withheld tax on and after June 1, 1971. — Notwithstanding the provisions of subsection (a), on and after June 1, 1971, every employer required to deduct and withhold tax under this article shall, for each of the first eleven months of the calendar year, on or before the twentieth day of the succeeding month and for the last calendar month of the year, on or before the last day of the succeeding month, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld, if such withheld taxes aggregate one hundred dollars or more for such month; except any employer with respect to whom the tax commissioner may have by regulation provided otherwise in accordance with the provisions of subsection (a): Provided, That in accordance with regulations promulgated by the tax commissioner, a payment of withheld tax may be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.

(d) Deposit in trust for tax commissioner. — Whenever any employer fails to collect, truthfully account for, pay over the tax or make returns of the tax as required in this section, the tax commissioner may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the
tax commissioner, and to keep the amount of such tax
in such account until payment over to the tax commis-
sioner. Such notice shall remain in effect until a notice
of cancellation is served by the tax commissioner.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-7. Persons and organizations exempt from tax.
§11-23-17. Credits against tax.
§11-23-25. Credit for consumers sales and service tax and use tax paid.


1. (a) General. — When used in this article, or in the
administration of this article, terms defined in this
section shall have the meanings ascribed to them herein
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 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 taxpay-
er’s regular trade or business operations.

4. (2) Capital. — The term “capital” of a taxpayer shall
mean:

5. (A) In the case of a corporation, the average of the
beginning and ending year balances of the sum of the
following entries from Schedule L of Federal Form
1120, as filed by the taxpayer with the Internal Revenue
Service for the taxable year:

6. (i) The value of all common stock and preferred stock
of the taxpayer;

7. (ii) The amount of paid-in or capital surplus;

8. (iii) Retained earnings, appropriated and
unappropriated;
(iv) Less the cost of treasury stock.

(B) In the case of a partnership, the average of the beginning and ending year balances of the value of partner's capital accounts from Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service for the taxable year.

(C) Additional items in capital. — The term "capital" for purposes of this article shall include such additional items from the accounts of the taxpayer as the tax commissioner may by regulation prescribe, which fairly represent the net equity of the taxpayer as defined in accordance with generally accepted accounting principles.

(D) Allowance for certain government obligations and obligations secured by residential property. As to both corporations and partnerships, capital shall be multiplied by a fraction equal to one minus a fraction:

(i) The numerator of which is the sum of the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120 or Federal Form 1065) of the following:

(a) Obligations and securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy;

(b) Obligations of this state and any political subdivision of this state;

(c) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(d) Loans primarily secured by a lien or security agreement on residential property in the form of a
mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(ii) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of the Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships, Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service.

(3) Commercial domicile. — The term “commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(4) Commissioner or tax commissioner. — The terms “commissioner” or “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) Corporation. — The term “corporation” includes any corporation, S corporation, joint-stock company and any association or other organization which is taxable as a corporation under federal income tax laws or the income tax laws of this state.

(7) 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 regulations promulgated thereunder.

(8) Doing business. — The term “doing business” means any activity of a corporation or partnership which enjoys the benefits and protection of the government and laws of this state, except the activity of agriculture and farming, which shall mean the production of food, fiber and woodland products (but not timbering activity) by means of cultivation, tillage of the
soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by persons other than the producer thereof.

The activity of agriculture and farming shall mean not less than five acres of land and the improvements thereon, used in the production of the aforementioned activities, and shall mean the production of at least one thousand dollars of products per annum through the conduct of such principal business activities as set forth in section ten, article one-a, chapter eleven of this code.

(9) Domestic corporation. — The term “domestic corporation” means a corporation organized under the laws of this state, 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.

(10) Federal Form 1120. — The term “Federal Form 1120” means the annual federal income tax return of any corporation made pursuant to the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the federal taxable income of a corporation, and filed with the Federal Internal Revenue Service. 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.

(11) Federal Form 1065. — The term “Federal Form 1065” means the annual federal income tax return of a partnership made pursuant to the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in
respect to the federal taxable income of a partnership, and filed with the Federal Internal Revenue Service.

(12) 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.

(13) Financial organization. — The term "financial organization" includes any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety percent of the assets of which consist of intangible personal property and at least ninety percent of the gross receipts of which consist of dividends, interest and other charges derived from the use of money or credit.

(14) 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.

(15) Includes and including. — The term "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.

(16) Parent and subsidiary corporations. — A corporation which owns on average during the taxable year more than fifty percent of the stock of all classes of another corporation is defined to be the "parent corporation" and the corporation which is so owned by the parent is defined to be a "subsidiary corporation."

(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 corporation or partnership.

(19) **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 a consolidated group.

(20) **Sales.** — The term “sales” means all gross receipts of the taxpayer that are “business income,” as defined in this section.

(21) **State.** — The term “state” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(22) **Stock.** — The term “stock” includes shares in a corporation, association or joint-stock company. It shall not include nonvoting stock which is limited and preferred as to dividends, or treasury stock. “Stock owned by a corporation” shall include stock owned directly by such corporation and stock which is subject to an option to acquire stock.

(23) **Taxable year.** — The term “taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in case of a return made for a fractional part of a year (short taxable year) under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(24) **Taxable in another state.** — The term “taxable in another state” for purposes of apportionment under this article, means a taxpayer who:

(A) Is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or

(B) Would be subject to a net income tax if such other state imposed such a tax.

(25) **Taxpayer.** — The term “taxpayer” means any
person (as defined in this section) subject to the tax
imposed by this article.

(26) *This code.* — The term “this code” means the code
of West Virginia, one thousand nine hundred thirty-one,
as amended.

(27) *This state.* — The term “this state” means the
state of West Virginia.

(28) *Treasury stock.* — The term “treasury stock”
means shares of a corporation which have been issued
and have been subsequently acquired by and belong to
such corporation, and have not been canceled or restored
to the status of authorized but unissued shares. Treasury
stock is deemed to be issued shares, but not outstanding
shares.

(c) Any term used in this article shall have the same
meaning as when used in a comparable context in the
laws of the United States relating to federal income
taxes, unless a different meaning is clearly required by
the context or by definition in this article. Any reference
in this article to the laws of the United States, or to the
Internal Revenue Code, or to the federal income tax law
shall mean the provisions of the laws of the United
States as related to the determination of income for
federal income tax purposes as in effect on the first day
of January, one thousand nine hundred eighty-five.

§11-23-7. Persons and organizations exempt from tax.

1 The following organizations and persons shall be
2 exempt from the tax imposed by this article to the
3 extent provided in this section:

4 (a) Natural persons doing business in this state that
5 are not doing business in the form of a partnership (as
6 defined in section three of this article) or in the form
7 of a corporation (as defined in section three of this
8 article). Such persons include persons doing business as
9 sole proprietors, sole practitioners and other self-
10 employed persons.

11 (b) Corporations and organizations which by reason of
12 their purposes or activities are exempt from federal
income tax: Provided, That this exemption shall not apply to that portion of their capital (as defined in section three of this article) which is used, directly or indirectly, in the generation of unrelated business income (as defined in the Internal Revenue Code) of any such corporation or organization if the unrelated business income is subject to federal income tax.

(c) Insurance companies which pay this state a tax upon premiums.

(d) Production credit associations organized under the provisions of the federal "Farm Credit Act of 1933": Provided, That this exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.

(e) Any trust established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred eighty-five.

(f) Any credit union organized under the provisions of chapter thirty-one, or any other chapter of this code: Provided, That this exemption shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code.

(g) Any corporation organized under this code which is a political subdivision of the state of West Virginia, or is an instrumentality of a political subdivision of this state, and was created pursuant to this code.


(a) In general. — Every person subject to the tax imposed by this article shall make and file an annual return for the taxable year with the tax commissioner on or before:

(1) The fifteenth day of the third month of the next succeeding taxable year if the person is a corporation;
(2) The fifteenth day of the fourth month of the next succeeding taxable year if the person is a partnership.

The annual return shall include such information as the tax commissioner may require for determining the amount of taxes due under this article for the taxable year.

(b) Consolidated returns. — Any corporation that files as part of an affiliated group for purposes of the tax imposed by article twenty-four of this chapter shall file a consolidated return under this article.

(c) The tax commissioner may, at his discretion, require an affiliated group of corporations to file a consolidated tax return under this article in order to accurately determine the taxes due under this article.


(a) Requirement of declaration. — Every taxpayer subject to tax under this article shall file a declaration of estimated tax for the taxable year if the taxpayer’s liability for tax under this article can reasonably be expected to exceed twelve thousand dollars for the taxable year. A taxpayer not required by this section to file a declaration and pay estimated tax may elect to so file and pay.

(b) Definition of estimated tax. — The term “estimated tax” means the amount which a taxpayer estimates to be his liability under this article for the taxable year.

(c) Contents of declaration. — The declaration shall contain such information as the tax commissioner may, by rules or regulations, require, including, but not limited to, such detailed information as may be necessary to estimate the taxpayer’s liability under section six of this article.

(d) Time for filing declaration. — A declaration of estimated tax shall be filed on or before the fifteenth day of the fourth month of the taxable year, for any taxable year beginning after the thirtieth day of June, one thousand nine hundred eighty-seven.
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(e) Amendment of declaration. — A taxpayer may amend his declaration at any time during the taxable year in accordance with regulations prescribed by the tax commissioner. If any amendment of a declaration is filed by a taxpayer, the remaining installments, if any, shall be rateably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment. If any amendment is made after the fifteenth day of the ninth month of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(f) Payment of estimated tax. — The estimated tax shall be paid in four equal installments. At the time the declaration of estimated payment is filed, the taxpayer shall pay one fourth of the estimated tax liability for the taxable year. The second, third and fourth installments shall be paid on the following fifteenth day of the sixth, ninth and twelfth months of the taxable year, respectively.

(g) Application to short taxable year. — This section shall apply to a taxable year of less than twelve months in accordance with regulations of the tax commissioner.

(h) Installment paid in advance. — Any taxpayer may elect to pay any installment of its estimated tax prior to the date prescribed for its payment.

§11-23-17. Credits against tax.

(a) A credit shall be allowed against the tax imposed by this article equal to the amount of franchise tax liability due under this article, (determined before application of credits) multiplied by a fraction, the numerator of which is the gross income of the business subject to tax under article thirteen-a of this chapter and the denominator of which is the total amount of gross income derived by the taxpayer from all activity in West Virginia: Provided, That on or after the first day of July, one thousand nine hundred eighty-eight, a credit shall be allowed against the tax imposed by this article equal to the amount of franchise tax liability due under this article, (determined before application of credits) multiplied by a fraction, the numerator of which
is the gross income of the business subject to tax under articles thirteen and thirteen-a of this chapter and the denominator of which is the total amount of gross income derived by the taxpayer from all activity in West Virginia.

(b) A parent taxpayer who files a separate return under this article shall be allowed a credit against such taxpayer’s liability for the tax under this article for the amount of net taxes that would have been paid without regard to the adjustment required by subparagraph (D), paragraph (2), subsection (b), section three of this article for the taxable year by a subsidiary corporation or partnership: Provided, That the amount of credit allowed shall not exceed the amount of tax that would have been paid, without regard to such adjustment, under this article by the subsidiary or partnership, multiplied by the percentage of the parent’s ownership of the subsidiary corporation or partnership. In no case shall any credit allowable by this section, which is not used on an annual return, be carried forward or back, but instead the same shall be forfeited.

(c) A credit shall be allowed against the tax imposed by this article equal to the amount of liability of the taxpayer for the taxable year for the full amount of any tax imposed pursuant to article eight of this chapter on the capital of the business, as determined under sections fourteen and fourteen-a, article three of this chapter.

§11-23-25. Credit for consumers sales and service tax and use tax paid.

The tax imposed by this article shall be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.
§11-24-6. Adjustments in determining West Virginia taxable income.
§11-24-23. Credit for consumers sales and service tax and use tax paid.
§11-24-3a. Specific terms defined.

For purposes of this article:

1. (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. (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. (3) Compensation. — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

4. (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. (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 regulations promulgated thereunder.

6. (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. (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 the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the federal taxable income of a corporation, and filed with the Federal Internal Revenue Service. 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
code of West Virginia.

(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 Common-
wealth 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 commis-
sioner" 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
§11-24-6. Adjustments in determining West Virginia taxable income.

(a) General. — In determining West Virginia taxable income of a corporation, its taxable income as defined for federal income tax purposes shall be adjusted and determined before the apportionment provided by section seven of this article, by the items specified in this section.

(b) Adjustments increasing federal taxable income. — There shall be added to federal taxable income, unless already included in the computation of federal taxable income, the following items except that adjustment (5) shall be required only with respect to tax periods ending after the thirty-first day of December, one thousand nine hundred eighty-one:

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal taxable income and not credited against federal income tax, and the taxes imposed by this state for which credit against the taxes imposed by section four is allowed by section nine; and

(4) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal taxable income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the

*Clerk's Note: This section was also amended by S. B. 760, which passed subsequent to this act.
following recovery property: three-year property—no modifications; five-year property—ten percent; ten-year property—fifteen percent; fifteen-year public utility property—twenty-five percent; and fifteen-year or eighteen-year real property—thirty-five percent: 

Provided, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method, or to any taxable year beginning after the thirtieth day of June, one thousand nine hundred eighty-seven.

(c) Adjustments decreasing federal taxable income. — There shall be subtracted from federal taxable income:

1. Any gain from the sale or other disposition of property having a higher fair market value on the first day of July, one thousand nine hundred sixty-seven, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis;

2. The amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

3. The amount of dividends received, to the extent included in federal taxable income: Provided, That this modification shall not be made for taxable years beginning after the thirtieth day of June, one thousand nine hundred eighty-seven;

4. Thirty-seven and one-half percent of the excess of net long-term capital gain over net short-term capital loss as defined in the laws of the United States: Provided, That this modification shall not be made for taxable years beginning after the thirtieth day of June, one thousand nine hundred eighty-seven;

5. The amount added to federal taxable income due to the elimination of the reserve method for computation of the bad debt deduction; and

6. The full amount of interest expense actually
disallowed in determining federal taxable income which was incurred or continued to purchase or carry obligations or securities of any state or of any political subdivision thereof.

(d) Adjustment resulting from recomputation of net operating loss deduction. — In determining the West Virginia taxable income of a corporation entitled to a net operating loss deduction for the taxable year for federal income tax purposes, there shall be added to or subtracted from the federal taxable income the amount of an adjustment reflecting a recomputation of such net operating loss deduction in which the adjustments required by subsections (b) and (c) are made for each taxable year involved in the computation of such net operating loss deduction.

(e) Special adjustments for expenditures for water and air pollution control facilities.

(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be:

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities and air pollution control facilities as defined in section 48 (h) (12) (B) and (C) of the Internal Revenue Code, and

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope of application of such election shall be defined, as the tax commissioner may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any
particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall (instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(f) Allowance for certain government obligations and obligations secured by residential property. — The West Virginia taxable income of a taxpayer subject to this article as adjusted in accordance with parts (b), (c), (d) and (e) of this section shall be further adjusted by multiplying such taxable income after such adjustment by parts (b), (c), (d) and (e) by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy, which is specifically made exempt from state taxes by federal law;

(B) Obligations or securities of this state and any political subdivision or authority thereof;
(C) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(D) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(2) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of Federal Form 1120, which are filed by the taxpayer with the Internal Revenue Service.


(a) General. — Any taxpayer having income from business activity which is taxable both in this state and in another state shall allocate and apportion its net income as provided in this section. For purposes of this section, the term “net income” means the taxpayer's federal taxable income adjusted as provided in section six.

(b) “Taxable in another state” defined. — For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporation stock tax, or

(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to such tax.

(c) Business activities entirely within West Virginia. — If the business activities of a taxpayer take place entirely within this state, and if such taxpayer is not taxable in another state, the entire net income of such taxpayer is subject to the tax imposed by this article.

(d) Business activities partially within and partially without West Virginia; allocation of nonbusiness income. — If the business activities of a taxpayer take place
26 partially within and partially without this state and
27 such taxpayer is also taxable in another state, rents and
28 royalties from real or tangible personal property, capital
29 gains, interest, dividends or patent or copyright
30 royalties, to the extent that they constitute nonbusiness
31 income of the taxpayer, shall be allocated as provided
32 in subdivisions (1) through (4).

33 (1) Net rents and royalties.

34 (A) Net rents and royalties from real property located
35 in this state are allocable to this state.

36 (B) Net rents and royalties from tangible personal
37 property are allocable to this state:

38 (i) If and to the extent that the property is utilized in
39 this state, or

40 (ii) In their entirety if the taxpayer's commercial
41 domicile is in this state and the taxpayer is not
42 organized under the laws of or taxable in the state in
43 which the property is utilized.

44 (C) The extent of utilization of tangible personal
45 property in a state is determined by multiplying the
46 rents and royalties by a fraction, the numerator of which
47 is the number of days of physical location of the property
48 in the state during the rental or royalty period in the
49 taxable year and the denominator of which is the
50 number of days of physical location of the property
51 everywhere during all rental or royalty periods in the
52 taxable year. If the physical location of the property
53 during the rental or royalty period is unknown or
54 unascertainable by the taxpayer, tangible personal
55 property is utilized in the state in which the property
56 was located at the time the rental or royalty payer
57 obtained possession.

58 (2) Capital gains.

59 (A) Capital gains and losses from sales of real
60 property located in this state are allocable to this state.

61 (B) Capital gains and losses from sales of tangible
62 personal property are allocable to this state if:
(i) The property had a situs in this state at the time of the sale, or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(D) Gains pursuant to section 631 (a) and (b) of the Internal Revenue Code of 1986, as amended, shall be considered business income for purposes of this article.

(3) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Patent and copyright royalties.

(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright
is utilized in the state in which the taxpayer's commercial domicile is located.

(e) Business activities partially within and partially without this state; apportionment of business income. — All net income, after deducting those items specifically allocated under subsection (d), shall be apportioned to this state by multiplying such net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(1) Property factor. — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L Federal Form 1120, plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(2) Value of property. — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: Provided, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under regulations of the tax commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term "net annual rental rate" is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu
of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) Leasehold improvements. — Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(4) Average value of property. — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: Provided, That the tax commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(5) Payroll factor. — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid by the taxpayer during the taxable year, as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation, or as shown on a pro forma return.

(6) Compensation. — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any
other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided such amounts constitute income to the recipient for federal income tax purposes.

(7) *Employee.* — The term “employee” means:

(A) Any officer of a corporation; or

(B) Any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

(8) *Compensation.* — Compensation is paid in this state if:

(A) The employee’s service is performed entirely within this state; or

(B) The employee’s service is performed both within and without this state, but the service performed without the state is incidental to the individual’s service within this state. The word “incidental” means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

(C) Some of the service is performed in this state and

(i) The employee’s base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee’s residence is in this state.

The term “base of operations” is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communi-
cations from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(9) Sales factor. — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year, less returns and allowances. The denominator of the fraction shall be the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120, and consisting of those certain pertinent portions of the (gross income) elements set forth.

(10) Allocation of sales of tangible personal property. — Sales of tangible personal property are in this state if:

(A) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(B) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and

(i) The purchaser is the United States government; or

(ii) The taxpayer is not taxable in the state of the purchaser.

(11) Allocation of other sales. — Sales, other than sales of tangible personal property are in this state if:

(A) The income-producing activity is performed in this state; or

(B) The income-producing activity is performed both in and outside this state and a greater proportion of the
income-producing activity is performed in this state than in any other state, based on costs of performance.

(f) Income-producing activity. — The term "income-producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. Such activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. "Income-producing activity" includes, but is not limited to, the following:

(1) The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service;

(2) The sale, rental, leasing, licensing or other use of real property;

(3) The sale, rental, leasing, licensing or other use of tangible personal property; or

(4) The sale, licensing or other use of intangible personal property.

The mere holding of intangible personal property is not, in itself, an income-producing activity.

(g) Cost of performance. — The term "cost of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(h) Other methods of allocation and apportionment.

(1) General. — If the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may petition for or the tax commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) Separate accounting;
(B) The exclusion of one or more of the factors;
(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's income.

(2) Alternative method for public utilities. — If the taxpayer is a public utility and if the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for, or the tax commissioner may require, as an alternative to the other methods provided for in subdivision (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the public service commission of this state pursuant to the provisions of section eight, article two, chapter twenty-four of this code, provided the allocation and apportionment provisions of such system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.

(3) Burden of proof. — In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in subdivision (1) or (2) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof shall:

(A) If the tax commissioner seeks employment of one of such methods, be on the tax commissioner, or
(B) If the taxpayer seeks employment of one of such other methods, be on the taxpayer.

§11-24-23. Credit for consumers sales and service tax and use tax paid.

The tax imposed by this article shall be subject to the
2 credit set forth in section nine-b, article fifteen of this
3 chapter, and the credit set forth in section three-b,
4 article fifteen-a of this chapter.

CHAPTER 132

(H. B. 2274—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter five-c of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated
section twenty-two; to amend and reenact sections three,
four, four-b, five and seven, article thirteen-c, chapter
eleven of said code; to further amend said article
thirteen-c by adding thereto a new section, designated
section seven-a; to amend and reenact section eight,
article thirteen-d of said chapter eleven; to further
amend said article thirteen-d by adding thereto a new
section, designated section three-a; and to amend article
thirteen-e of said chapter eleven by adding thereto a
new section, designated section three-a, all relating
generally to exemptions from and credits against taxes
assessed or collected pursuant to the provisions of
chapter eleven of the code of West Virginia, which
exemptions and credits are provided for purposes of and
to stimulate economic development in this state;
exempting the West Virginia industrial trade jobs and
development corporation from payment of ad valorem
property taxes on its real and personal property;
providing for proration of such taxes and exemption
when property is purchased or sold by the corporation;
amending the business investment and jobs expansion
tax credit by amending the definition of certain terms
used therein, including: “business,” “business facility,”
“eligible taxpayer,” “new business facility,” “new
property,” “property purchased or leased for business
expansion,” “purchase,” “qualified activity” and “tax-
payer”; providing for election to delay start of ten-year
credit period to be made in the annual income tax
return filed for the taxable year in which the business
investment and jobs expansion tax credit is first taken for the qualified investment; requiring that an application for project certification be filed with and approved by the tax commissioner prior to any credit being claimed or allowed for the project's qualified investment and new jobs created as a direct result of the investment; specifying that for purposes of determining the amount of taxes against which the business investment and jobs expansion tax credit may be taken by a participant in a project, project participants must apportion their liability for such taxes by a payroll factor, the numerator of which is total compensation paid in this state during the taxable year by all project participants to all new employees filling the new jobs created, and the denominator of which is the total compensation paid in this state during the taxable year by all project participants to their employees in this state; authorizing certification of a project having qualified investment of at least fifty million dollars placed in service or use between the first day of March, one thousand nine hundred eighty-five and the first day of February, one thousand nine hundred eighty-six, where the application for certification of such project was filed with the tax commissioner prior to the thirty-first day of December, one thousand nine hundred eighty-six; allowing the business investment and jobs expansion tax credit to be applied against sales and use taxes paid on purchases of tangible personal property and taxable services made on or after the first day of July, one thousand nine hundred eighty-seven, when such property or services will be directly used or consumed in the qualified investment activity; providing for the rebate amount of credit allowed for payment of unemployment taxes and workers' compensation premiums with respect to the new employees filling the new jobs directly attributable to the qualified investment to be determined based on the actual expenditure for such purposes rather than applying the payroll factor to total unemployment taxes and workers' compensation premiums paid; providing for redetermination of the new jobs percentage to be made with the annual income tax return instead of the business and occupation tax or
carrier income tax return filed for the third taxable year for which the qualified investment is in service or use; creating a business investment and jobs expansion tax credit for small businesses whose qualified investment directly results in the creation of at least ten new jobs and as to such credit; defining the term "small business" and other terms; providing for computation and allowance of small business tax credits; providing for annual adjustment of the new jobs percentage; allowing certain small business projects to qualify for credit; authorizing tax commissioner to prescribe such regulations as he deems necessary to administer the small business tax credit; providing for the small business tax credit to be allowed for qualified investment property purchased or leased by a small business after the thirtieth day of June, one thousand nine hundred eighty-seven that creates at least ten new jobs; providing for the business and occupation tax credit for industrial expansion and revitalization for research and development projects to also apply against sales and use taxes paid on purchases directly used or consumed in taxpayer’s qualified investment activity when the property or service is purchased after the thirtieth day of June, one thousand nine hundred eighty-seven; clarifying that the industrial expansion credit which was repealed, effective the first day of March, one thousand nine hundred eighty-five, and recodified as of such date as part of the industrial revitalization credit is fully and completely preserved under provisions of the recodified law for the remainder of ten-year credit period that was in existence for any particular taxpayer under the business and occupation tax credit for industrial expansion law prior to its repeal; providing for the business and occupation tax credit for coal loading facilities to be applied against sales and use taxes paid on purchases of tangible personal property and taxable services that are directly used or consumed in taxpayer’s qualified investment activity when such purchases are made after the thirtieth day of June, one thousand nine hundred eighty-seven; and generally specifying effective dates.
Be it enacted by the Legislature of West Virginia:

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

Chapter
5C. Basic Assistance for Industry and Trade.

11. Taxation.

CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY AND TRADE.

ARTICLE 2. WEST VIRGINIA INDUSTRIAL AND TRADE JOBS DEVELOPMENT CORPORATION.

§5C-2-22. Exemption from taxation.

1 The corporation, being a political subdivision of this state, is exempt from taxation; and the real and personal property which the corporation may acquire to be leased, sold or otherwise disposed of, according to the provisions of this article, is exempt from taxation, whether by the state, or any county, municipality, or other levying body, as public property, so long as the same is owned by corporation: Provided, That where title to real property is transferred after the assessment day, the amount of ad valorem property taxes that become due and payable subsequent to the date title is transferred shall be prorated between the transferee and the transferor. Where the transferor is a taxable person, the transferor's liability for such ad valorem property taxes shall be limited to that portion apportioned to the transferor based on the number of months
during the tax year to which the levy relates that the transferor had legal title to the property; and the corporation being the transferee shall be exempt from payment of the ad valorem property taxes apportioned to the months of the tax year during which it had title to the property. Where the transferor is the corporation and the transferee is one not exempt from payment of ad valorem property taxes, the amount of such taxes would become due and payable subsequent to the date title is transferred to the transferee but for the owner of record on the assessment day being a tax exempt entity, shall nevertheless be determined by extension of the applicable levy rates and be extended prorated between the transferor and transferee based upon the number of months during the tax year for which the taxes are levied which each respectively have title to the property, and the transferee shall be liable for payment of ad valorem property taxes prorated to the period of time after it acquired title to the property, but the transferor shall not.

CHAPTER 11. TAXATION.

Article
13C. Business Investment and Jobs Expansion Credit.
13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization and for Research and Development Projects.
13E. Business and Occupation Tax Credit for Coal Loading Facilities.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-4. Amount of credit allowed.
§11-13C-4b. Credit allowable for certified projects.
§11-13C-5. Application of annual credit allowance.
§11-13C-7. New jobs percentage.
§11-13C-7a. Small business credit.


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.
(b) Terms defined.

(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, twenty-one, twenty-three and twenty-four of this chapter (or any one or combination of such articles of this chapter).

(2) Business expansion. — The term "business expansion" means capital investment in a new or expanded business facility in this state.

(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, and all site preparation and start-up costs of the taxpayer for the business facility which it capitalizes for federal income tax purposes.

(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.

(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 article twelve-a or thirteen, (or both) of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four of this chapter
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(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 subdivision.

(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 purchased by, or leased to, the taxpayer and is placed in service or use 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. The tax commissioner can waive this requirement if the facility was acquired from a related party for its fair market value.

(D) 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 em-
ployment 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
errection of which is completed on or after March one,
one thousand nine hundred eighty-five, and placed in service or use after such date; and

(B) Property leased or acquired by the taxpayer that is placed in service or use in this state 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 or leased 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 and placed in service or use 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, placed in service or use 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 and placed
in service or use by the taxpayer on or after the first
day of March, one thousand nine hundred eighty-five.

(3) Tangible personal property placed in service or
use 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 depreci-
ation, 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:

(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. The tax commissioner can waive this requirement if the property was acquired from a related party for its then fair market value; 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, twenty-one, twenty-three and twenty-four 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 or superseding property is placed in service by the taxpayer; or

(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, twenty-one, twenty-three and twenty-four of this chapter (or any one or combination 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 determined and applied as hereinafter provided in this article.

(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 succeed-
ing taxable year. This election shall be made in the
annual income tax return filed for the taxable year in
which credit is first taken on the qualified investment
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-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 develop-
ment 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 fifty 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 and approved by the tax commissioner prior to any credit being claimed or allowed for the project's qualified investment and new jobs created as a direct result of the qualified investment. 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 fifty 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 credit allowable, as determined under subdivision (1) or (2), above, shall be applied as provided in section five, and shall be claimed in the manner specified in the project's application to the tax commissioner for certification under this section, by one participant in the project or divided among the several participants in the project, and for this purpose the numerator of the payroll factor shall be the total compensation paid in this state during the taxable year by all project participants to all new employees filling the new jobs created and the denominator shall be the total compensation paid in this state during the taxable year by all project participants to their employees. 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 qualified 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.**

(1) This section shall apply to a project having qualified investment of at least fifty million dollars placed in service or use between the first day of March, one thousand nine hundred eighty-five and the first day of February, one thousand nine hundred eighty-six, and shall also apply to qualified investment made on or after the first day of February, one thousand nine hundred eighty-six.

(2) The application for project certification for a project having qualified investment of at least fifty million dollars placed in service or use between the first day of March, one thousand nine hundred eighty-five and the first day of February, one thousand nine hundred eighty-six, shall be deemed timely filed under subsection (b) of this section only if such application is filed with the tax commissioner prior to the thirty-first day of December, one thousand nine hundred eighty-six: *Provided,* That the tax commissioner shall not certify such project until the project participants certify that at least fifty new jobs were created by them prior to the first day of January, one thousand nine hundred eighty-eight, as a direct result of their qualified investment in the project, and that such jobs did not previously exist in this state, determined as of the thirty-first day of January, one thousand nine hundred eighty-six; that the
inclusion of such property shall not give rise to a refund or credit of any taxes administered under this chapter for taxable years ending before the first day of January, one thousand nine hundred eighty-seven; and that the ten-year credit period for such certified project shall begin with the current taxable year of the project participant or participants who will be claiming the allowable credit.

§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; or the amount allowed under section seven-a of this article of the taxable year.

(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 (k), both inclusive, and in that order.

(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 (determined 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 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.

(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.

(4) No credit shall be allowed under this section against any employer withholding taxes imposed by article twenty-one of this chapter.

(j) Sales and use taxes.

On and after the first day of July, one thousand nine hundred eighty-seven, for purchases of tangible personal property and taxable services made on or after that date, that portion of the allowable credit, which is attributable to qualified investment in a business or activity subject to the taxes imposed by articles fifteen and fifteen-a of this chapter on purchases for use or consumption in the conduct of such business or activity, shall be applied to reduce up to eighty percent of the taxes imposed by articles fifteen and fifteen-a of this chapter on purchases that are directly used or consumed in the qualified investment activity. When property and services purchased for use or consumption are not solely used or consumed in the qualified investment activity, the cost thereof shall be apportioned between such activities. Only that amount apportioned to purchases directly used or consumed in the qualified investment activity shall be included when applying the credit allowable under this subsection.

(k) Ad valorem property taxes; unemployment taxes and workers' compensation premiums.

(1) 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 attributable to the compensation of new employees filling the new jobs that are directly attributable to the qualified investment; plus

(C) Twenty percent of the workers' compensation premiums imposed by article two, chapter twenty-three of this code, for the taxable year attributable to the compensation paid new employees filling the new jobs, that are directly attributable to the qualified investment.

(2) A taxpayer eligible to claim this rebate shall apply either the amount of the unused credit or the sum determined under subdivision (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 to tax year in which the qualified investment was placed in service or use in this state by the taxpayer.

(1) 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 (k).

(m) Effective date.

(1) This section, as amended, (in the year one thousand nine hundred eighty-six) 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.

(2) This section as amended (in the year one thousand nine hundred eighty-seven) shall be effective for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven.

§11-13C-7. New jobs percentage.

(a) In general. — The new jobs percentage is based on the number of new jobs created in this state that are directly attributable to the qualified investment of the taxpayer.

(b) Applicable percentage. — For the purpose of subsection (a), the applicable new jobs percentage shall be determined under the following table:

<table>
<thead>
<tr>
<th>If number of new jobs is:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000</td>
<td>90%</td>
</tr>
<tr>
<td>760</td>
<td>80%</td>
</tr>
<tr>
<td>520</td>
<td>70%</td>
</tr>
<tr>
<td>280</td>
<td>60%</td>
</tr>
<tr>
<td>50</td>
<td>50%</td>
</tr>
</tbody>
</table>

(c) When a job is attributable. — An employee’s position is directly attributable to the qualified investment if:

(1) The employee’s service is performed or his base of operations is at the new or expanded business facility;

(2) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and
(3) But for the qualified investment, the position would not have existed.

(d) Certification of new jobs. — With the annual return for the taxes imposed by article twelve-a or thirteen of this chapter, filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in subsection (f), that are, or will be, directly attributable to the qualified investment of the taxpayer: 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, twenty-one, twenty-three and twenty-four of this chapter (or any one or combination of such articles of this chapter).”

(e) Equivalency of permanent employees. — The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of subsection (b) hereof but not for the purposes of subsection (c) hereof.

(f) Redetermination of new jobs percentage. — With the annual return for the taxes imposed by article twenty-one or twenty-four of this chapter, filed for the third taxable year in which the qualified investment is in service or use, the taxpayer shall certify the actual number of new jobs created by it in this state, that are directly attributable to the qualified investment of the taxpayer: 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, twenty-one, twenty-three and twenty-four of this chapter (or any one or combination of such articles of this chapter).”

(1) If the actual number of jobs created would result in a higher new jobs percentage, the credit allowed under this article shall be redetermined and amended
returns filed for the first and second taxable years that
the qualified investment was in service or use in this
state.

(2) If the actual number of jobs created would result
in a lower new jobs percentage, the credit previously
allowed under this article shall be redetermined and
amended returns filed for the first and second taxable
years. In applying the amount of redetermined credit
allowable for the two preceding taxable years, the
redetermined credit shall first be applied to the extent
it was originally applied in such prior two years to
personal income taxes, then to corporation net income
taxes, then to business franchise taxes, then to telecom-
munications taxes, then to severance taxes, then to
carrier income taxes and lastly to business and occupa-
tion taxes. Any additional taxes due under this chapter
shall be remitted with the amended returns filed with
the tax commissioner, along with interest, as provided
in section seventeen, article ten of this chapter, and a
ten percent penalty, which may be waived by the tax
commissioner if the taxpayer shows that the over-
claimed amount of the new jobs percentage was due to
reasonable cause and not due to willful neglect.

§11-13C-7a. Small business credit.

(a) "Small business" defined. — For purposes of this
section, the term "small business" means a business
which has an annual payroll of one million five hundred
thousand dollars or less, or annual gross sales of not
more than five million dollars, whichever is the higher:
Provided, That beginning the first day of January, one
thousand nine hundred eighty-nine and each first day
of January thereafter, the tax commissioner shall
prescribe amounts which shall apply in lieu of the above
amounts during that calendar year. These amounts shall
be prescribed by increasing the amount of each by the
cost-of-living adjustment for such calendar year.

(1) Cost-of-living adjustment. — For purposes of
subsection (a), the cost-of-living adjustment for any
calendar year is the percentage (if any) by which:
(A) The consumer price index for the preceding calendar year exceeds
(B) The consumer price index for the calendar year one thousand nine hundred eighty-seven.

(2) Consumer price index for any calendar year. — For purposes of subdivision (1), the consumer price index for any calendar year is the average of the Federal Consumer Price Index as of the close of the twelve-month period ending on the thirty-first day of August of such calendar year.

(3) Consumer price index. — For purposes of subdivision (2), the term “Federal Consumer Price Index” means the last consumer price index for all urban consumers published by the United States department of labor.

(4) Rounding. — If any increase under subdivision (1) is not a multiple of fifty dollars, such increase shall be rounded to the next lowest multiple of fifty dollars.

(b) Amount of credit allowed.

(1) Credit allowed. — An eligible small business taxpayer shall be allowed a credit against the portion of taxes imposed by this state that are attributable to and the direct consequence of the eligible small business taxpayer’s qualified investment in a new or expanded business in this state which results in the creation of at least ten new jobs. The amount of this credit shall be determined as provided in this section.

(2) Amount of credit. — The amount of credit allowable under this section is determined by dividing the amount of the eligible small business taxpayer’s “qualified investment” (determined under section six) in “property purchased for business expansion” (as defined in section three) by ten. The amount of qualified investment so apportioned to each year of the ten year credit period shall be the annual measure against which taxpayer’s annual new jobs percentage (determined under subsection (d)) is applied. The product of this calculation establishes the maximum amount of credit allowable each year for ten consecutive years under this section due to the qualified investment.
Application of credit. — The annual credit allowance must be taken beginning with the taxable year in which the taxpayer places the qualified investment into service or use in this state, unless the taxpayer elects to delay the beginning of the ten year credit period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment is placed in service or use. Once made, this election cannot be revoked. The annual credit allowance shall be taken and applied in the manner prescribed in section five.

(c) New jobs. — The term "new jobs" has the meaning ascribed to it in subdivision (14), subsection (b), section three of this article: Provided, That the median compensation of such new jobs shall not be less than eleven thousand dollars per year and that beginning the first day of January, one thousand nine hundred eighty-nine, and each first day of January thereafter, the tax commissioner shall adjust the median annual compensation specified in this subsection by increasing the amount thereof by the annual cost-of-living adjustment determined under subsection (a).

(1) The term "new employee" shall have the meaning ascribed to it in subdivision (13), subsection (b), section three of this article: Provided, That such term shall not include employees filling new jobs who:

(A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue Code of 1986, or a person who owns ten percent or more of the business with such ownership interest to be determined under rules set forth in subsection (b), section 267 of said Internal Revenue Code; or

(B) Worked for the taxpayer during the six-month period ending on the date taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six-month period beginning on the date taxpayer's qualified investment is placed in service or use.

(2) When a job is attributable. — An employee's
position is directly attributable to the qualified investment if:

(A) The employee's service is performed or his base of operations is at the new or expanded business facility;

(B) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(C) But for the qualified investment, the position would not have existed.

(d) **New jobs percentage.** — The annual new jobs percentage is based on the number of new jobs created in this state by the taxpayer that is directly attributable to taxpayer's qualified investment.

(1) If at least ten new jobs are created and filled during the taxable year in which the qualified investment is placed in service or use, the applicable new jobs percentage shall be thirty percent: Provided, That for each new job over ten, up to forty such additional new jobs, the applicable new jobs percentage shall be increased by adding thereto one half of one percent, with the maximum new jobs percentage not to exceed fifty percent.

(2) During each of the remaining nine years of the ten year credit period, the annual new jobs percentage shall be based on the average number of new jobs that were filled during that taxable year: Provided, That for purposes of estimating the new jobs percentage that will be applicable for each subsequent credit year, the taxpayer shall use the new jobs percentage allowable for the taxable year immediately prior thereto, and in the annual income tax return filed under this chapter for the then current tax year, taxpayer shall redetermine his allowable new jobs percentage for that year based on the average number of new employees employed in new jobs during that year (determined on a monthly basis) created as the direct result of taxpayer's qualified investment.

(e) **Certification of new jobs.** — With the annual income tax return filed under this chapter for each
taxable year during the ten year credit period, the taxpayer shall certify:

(1) the new jobs percentage for that taxable year;
(2) the amount of the credit allowance for that year;
(3) if the business is a partnership or electing small business corporation, the amount of credit allocated to the partners or shareholders, as the case may be;
(4) that qualified investment property continue to be used in the business, or if any of it was disposed of during the year the date of disposition and that such property was not disposed of prior to expiration of its useful life, as determined under section six;
(5) that the new jobs created by the qualified investment continue to exist and are filled by persons who meet the definition of new employee (as defined in subdivision (1), subsection (c) of this section) and are paid an average annual compensation equal to or greater than the minimum average annual compensation required by this section.

(f) Small business project. — A small business may apply to the tax commissioner under section four-b for certification of subdivision (1), subsection (a), section four-b project if that project will create at least ten new jobs.

(g) Regulations. — The tax commissioner shall prescribe such regulations as he may deem necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify taxpayer's continued entitlement to claim such credit; and to verify proper application of the credit allowed. The tax commissioner may, by regulation, require a taxpayer intending to claim credit under this section to file with the tax commissioner a notice of intent to claim this credit, before the taxpayer begins reducing his monthly or quarterly installment payments of estimated tax for the credit provided in this section.

(h) Effective date. — The credit provided in this section shall be allowed for qualified investment
property purchased or leased after the thirtieth day of June, one thousand nine hundred eighty-seven.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZATION AND FOR RESEARCH AND DEVELOPMENT PROJECTS.


1 On and after the first day of July, one thousand nine hundred eighty-seven, the credits allowed under section three shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a, fifteen, fifteen-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, or under articles fifteen and fifteen-a of this chapter on purchases directly used or consumed in taxpayer's qualified investment activity, 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.


1 Any tax credit which an industrial taxpayer was legally entitled to claim under article thirteen-c of this chapter prior to its repeal effective the first day of March, one thousand nine hundred eighty-five, shall be fully and completely preserved under the provisions of this article for the remainder of the ten year credit period that was then in existence under said article thirteen-c.

ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR COAL LOADING FACILITIES.


1 On and after the first day of July, one thousand nine hundred eighty-seven, the credits allowed under section three shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a, fifteen, fifteen-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, or under articles fifteen and fifteen-a of this chapter on purchases directly used or consumed in taxpayer's qualified investment activity, 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-d, or both, of this chapter.

CHAPTER 133
(Com. Sub. for S. B. 276—By Senator Jones)

[Passed March 9, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, fifteen, seventeen and eighteen, article one-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one-b by adding thereto a new section, designated section nineteen, all relating to the review of statewide property appraisals for ad valorem tax purposes; the additional review of such appraisals; notice of the appraised values of real property to the owners thereof by the tax commissioner; prescribing certain procedures with respect to any such notices returned as undeliverable because of lack of proper address; the duties of the sheriff and the assessor with respect to such return notices; requiring that such notices be delivered to property owners and the procedures relating thereto; providing for the partial reimbursement of the sheriff and the assessor by the county commission of certain costs incurred in connection therewith upon certain certifications by the tax commissioner; clarifying that values upon properties shall not be invalidated because of the owner's failure to receive such notice and providing review by the board of equalization and review in such cases; providing a procedure for review with respect to properties the values of which have been
changed by the tax commissioner or the assessor after the first day of October, one thousand nine hundred eighty-six; the review of such values by the board of equalization and review in the year one thousand nine hundred eighty-eight; requiring the county commission to report to the tax commissioner by the thirtieth day of June, one thousand nine hundred eighty-seven, with respect to certain matters relating to the appeal and review of property values and appraisals for ad valorem taxes; requiring the tax commissioner to provide a summary of such reports to the President of the Senate and the Speaker of the House of Delegates by the fifteenth day of July, one thousand nine hundred eighty-seven; requiring the county commissions to review and determine all appeals which have not been determined by the first day of June, one thousand nine hundred eighty-seven, by the first day of August, one thousand nine hundred eighty-seven; requiring the assessor to adjust and maintain the values of all such property in accordance with regulations provided by the tax commissioner; extending the review of hearings with respect to all such appeals filed by the second day of September, one thousand nine hundred eighty-six, to the first day of May, one thousand nine hundred eighty-seven; extending the period during which determinations may be made with respect to all such hearings to the first day of June, one thousand nine hundred eighty-seven; validating any hearings or determinations, or both, made after the first day of December, one thousand nine hundred eighty-six; requiring the tax commissioner and the assessor to examine the lists of all property subject to ad valorem tax after the final determination on the first day of July, one thousand nine hundred eighty-seven, to determine all properties which are grossly overvalued or undervalued; requiring that such lists be furnished to the county commission no later than the fourth day of January, one thousand nine hundred eighty-eight, for use by the board of equalization and review in February of said year; providing for partial reimbursement of the costs incurred by the assessors in connection with such review by the state tax commissioner; and providing for certain rules of
construction with respect to such amended sections and such new section.

Be it enacted by the Legislature of West Virginia:

That sections six, fifteen, seventeen and eighteen, article one-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article one-b be further amended by adding thereto a new section, designated section nineteen, all to read as follows:

ARTICLE 1B. ADDITIONAL REVIEW OF PROPERTY APPRAISALS; IMPLEMENTATION.

§11-1B-6. Notice of appraised values of real property to owner by tax commissioner; content; form.

§11-1B-15. Right of tax commissioner; assessor or property owner to review of newly discovered matters; limitations.

§11-1B-17. Report by county commission required; reports to Legislature.

§11-1B-18. Appraisal of property; date of implementation; assessor to make assessments.

§11-1B-19. Extending the period for hearings in certain cases; limitations; extending period of final determination; duty of assessor and tax commissioner with respect to certain overvalued or undervalued property; construction of section.

§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) Any notice returned by the post office as undeliv-
erable or returned to the tax department for lack of
address shall be forwarded to the office of the sheriff
of the county. The sheriff shall cause such notices to be
delivered by certified mail, or in any manner reasonably
designed to ensure that such property owners will be
properly notified. It is the duty of the county assessors
to assist in the discovery of proper mailing addresses
necessary in order that appraisal notices may be
delivered in a timely fashion. Any additional expenses
or costs incurred by the sheriff or the assessor, or both,
in completing the duties assigned to each by the
provisions of this subsection shall be paid or reimbursed
by the county commission upon certification by the tax
commissioner to the county commission as to the amount
and the reasonableness thereof.

(c) 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 commis-
sion 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 circumstan-
ces may be taken into consideration by the county
asser 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 RE-
SULTS FROM THE REAPPRaisal OF ALL
PROPERTY SUBJECT TO PROPERTY TAX AS
REQUIRED BY THE STATE CONSTITUTION.
COUNTY_______ DIST _______ MAP
_______ PARCEL _______ SPID _______ PROP-
ERTY LOCATION: (Including address) __________
____________ DATE __________
TAX CLASS: _______ ACCOUNT NO. _______
NOTICE: ____________________________
OWNERS NAME
MAILING ADDRESS
CITY, STATE, ZIP
DEAR PROPERTY OWNER,

IN COMPLIANCE WITH THE PROVISIONS OF THE WEST VIRGINIA STATE CONSTITUTION, ALL PROPERTY HAS BEEN REAPPRAISED BASED ON FAIR MARKET VALUE AS OF JULY, 1983.

STATE LAW REQUIRES THAT ALL ASSESSMENTS BE 60% OF FAIR MARKET VALUE AND THAT ANY INCREASES IN ASSESSMENTS BE PHASED-IN OVER A 10-YEAR PERIOD.

FOLLOWING ARE THE RESULTS OF THE RE-VALUATION AND THE ESTIMATED TAX IMPACT FOR THE PROPERTY LISTED ABOVE.

YOUR PROPERTY'S 1983 MARKET/VALUE ............... = $_______

X60%

ASSESSMENT VALUE........... = $_______

LESS YOUR CURRENT ASSESSED VALUE ........ = $_______

DIFFERENCE IN VALUE ...... = $_______

ASSUMING THE TAX RATES IN YOUR COUNTY DO NOT CHANGE AND ALSO ASSUMING THAT THERE HAVE BEEN NO CHANGES IN YOUR PROPERTY SINCE 1983, YOUR CURRENT ASSESSED VALUE OF $_______ WILL BE INCREASED TO $_______ FOR THE YEAR ______ AND WILL BE INCREASED $_______

EACH YEAR THEREAFTER FOR A TOTAL PERIOD OF TEN YEARS. BASED ON CURRENT ASSESSMENTS YOUR TAX FOR THE NEXT YEAR WILL BE $_______ IF YOUR ASSESSOR DETERMINES THAT YOUR PROPERTY HAS THE SAME VALUATION AS IN 1983, AND THAT THE LEVY RATES REMAIN THE SAME, THEN IN THAT EVENT YOUR TAX THE TENTH YEAR WILL BE $_______.

THE VALUES, ASSESSMENTS AND AMOUNT 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."

(d) 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.

(e) 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, nor invalidate any value otherwise correct: Provided, That nothing herein shall be construed to limit the rights and remedies provided in article three, chapter eleven: Provided, however, That the failure to receive notice shall give rise to review under section twenty-four, article three of chapter eleven.
(f) The sheriff, assessor, clerk of the county commission 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.

(g) 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-15. Right of tax commissioner, assessor or property owner to review of newly discovered matters; limitations.

(a) The tax commissioner, the assessor or any 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 theretofore 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.

(c) In the event the tax commissioner or assessor changes the base year value of property as a result of matters discovered subsequent to October one, one thousand nine hundred eighty-six, the owner of the property shall forthwith be notified of the change by mailing or delivering a notice thereof to such owner. The owner has forty-five days from the date on the notification to file an objection in writing with the county commission. The county commission may only hear and determine the matter when meeting after the year one thousand nine hundred eighty-seven for the purpose of reviewing and equalizing in accordance with section twenty-four, article three of this chapter.

§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 thirtieth day of June, one thousand nine hundred eighty-seven, 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 July, 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) County commissions shall proceed in a timely
manner to hold the review hearings and issue determinations in accordance with the provisions of this article and the guidelines and regulations of the tax commissioner. If all hearings have not been held, or completed, or determinations thereon have not been issued, by the first day of June, one thousand nine hundred eighty-seven, the tax commissioner shall deem the values appealed from, and the results thereof, substantially correct and the review procedures substantially complied with, for purposes of subsection (c) of this section. In such instances, the county commission shall proceed to hold review hearings and issue determinations in accordance with the provisions of this article and the guidelines and regulations of the tax commissioner, and shall complete all hearings and issue all determinations on or before the first day of August, one thousand nine hundred eighty-seven, at which time it is the duty of the county commissions to have all hearings held and completed, all determinations issued, and the results thereof reported to the tax commissioner.

(c) 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 under subsection (b) of this section or 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 and maintained by the assessor in accordance with regulations governing the appraisal of property for property tax purposes and instructions provided by the state tax commissioner to reflect consideration of such substitutions, alterations, accre-
tions, 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.

(d) 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.

§11-1B-19. Extending the period for hearings in certain cases; limitations; extending period of final determination of certain cases; validation of certain determinations; duty of assessor and tax commissioner with respect to certain overvalued or undervalued property; construction of section.

(a) The provisions of section twelve of this article or
of any other provision of this article to the contrary
notwithstanding, the period during which the final
determination by the county commission in any matter
upon or in which a petition for review of the appraised
value of any taxable property was timely filed under the
provisions of either section eight or fifteen of this article
or any other provision thereof, was to be finally
determined is hereby extended to and through the first
day of June, one thousand nine hundred eighty-seven.
The time period during which hearings may be con-
ducted with respect to any such timely-filed petitions for
review is hereby extended until and through the first
day of May, one thousand nine hundred eighty-seven,
with respect to those matters in which hearings have not
been previously concluded prior to the effective date of
this section. Further, in any such matter in which the
petition for review had been filed timely and in which
either the hearing or the final determination or both was
held or shall be made after the first day of December,
one thousand nine hundred eighty-six, such determina-
tion shall nonetheless be deemed timely heard or
determined for all intents and purposes, including, but
not limited to, the intents and purposes of this article.

(b) After the final determination of values has been
made in accordance with the provision of subsection (a)
of this section and the results certified for use in the tax
year for which the ad valorem tax lien attaches on the
first day of July, one thousand nine hundred eighty-
seven, the assessor and the tax commissioner shall
review the list of all property subject to ad valorem
taxation (and it shall be the joint, several and co-existing
duty of the assessor and the tax commissioner so to do)
for the purpose of ascertaining, identifying and listing
any and all items of such property which are obviously
grossly or significantly overvalued or undervalued;
which list, together with their recommendation as to the
true and actual value of each such item of such property,
shall be certified to the county commission not later than
the fourth day of January, in the year one thousand nine
hundred eighty-eight, for the use and consideration of
the respective boards of equalization and review in
February of that year. The assessor shall be reimbursed
by the state tax department in an amount not to exceed seventy-five percent of the costs and expenses incurred by the assessor in the review of such lists and the preparation and certification of such report to the board of equalization and review: Provided, That prior approval of the tax commissioner is obtained in advance of the incurring of such costs or expenses. The percentage of reimbursement as to each assessor shall be of a uniform amount as to all assessors.

(c) The provisions of section fourteen of this article shall apply to any matter decided or validated pursuant to this section, as shall the provisions of section eighteen, article one-a of this chapter, to the extent the same are not in conflict with this section.

(d) All other provisions of this article enacted by the Legislature, at the first extraordinary session thereof held in the year one thousand nine hundred eighty-six which are not in conflict with this section shall apply to all matters, circumstances and situations which may be subject to this article, and to the extent of any such conflict, the provisions of this section shall apply.

CHAPTER 134
(S. B. 558—By Senator Tonkovich, Mr. President)

[Passed March 11, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to property exempt from ad valorem taxation; property held by any college or university located in West Virginia or any nonprofit foundation or corporation which receives contributions on behalf of any such college or university.

Be it enacted by the Legislature of West Virginia:

That section nine, article three, 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 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

1 All property, real and personal, described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say: Property belonging to the
2 United States, other than property permitted by the
3 United States to be taxed under state law; property
4 belonging exclusively to the state; property belonging
5 exclusively to any county, district, city, village or town
6 in this state, and used for public purposes; property
7 located in this state, belonging to any city, town, village,
8 county or any other political subdivision of another state,
9 and used for public purposes; property used exclusively
10 for divine worship; parsonages, and the household goods
11 and furniture pertaining thereto; mortgages, bonds and
12 other evidence of indebtedness in the hands of bona fide
13 owners and holders hereafter issued and sold by
14 churches and religious societies for the purposes of
15 securing money to be used in the erection of church
16 buildings used exclusively for divine worship, or for the
17 purpose of paying indebtedness thereon; cemeteries;
18 property belonging to, or held in trust for, colleges,
19 seminaries, academies and free schools, if used for
20 educational, literary or scientific purposes, including
21 books, apparatus, annuities and furniture; property
22 belonging to, or held in trust for, colleges or universities
23 located in West Virginia, or any public or private
24 nonprofit foundation or corporation which receives
25 contributions exclusively for such college or university,
26 if the property or dividends, interest, rents or royalties
27 derived therefrom are used or devoted to educational
28 purposes of such college or university; public and family
29 libraries; property used for charitable purposes, and not
30 held or leased out for profit; property used for the public
31 purposes of distributing water or providing sewer
32 service by a duly chartered nonprofit corporation when
33 such property is not held, leased out or used for profit;
34 property used for area economic development purposes
35 by nonprofit corporations when such property is not
36 leased out for profit; all real estate not exceeding one-
37 half acre in extent, and the buildings thereon, and used
exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not leased or otherwise used with a view to profit; all property belonging to benevolent associations, not conducted for private profit; property belonging to any public institution for the education of the deaf, dumb or blind, or any hospital not held or leased out for profit; house of refuge, lunatic or orphan asylum; homes for children or for the aged, friendless or infirm, not conducted for private profit; fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies; all property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year; household goods to the value of two hundred dollars, whether or not held or used for profit; bank deposits and money; household goods (which term is deemed for purposes of this section to mean only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property) when not held or used for profit, and personal effects (which term is deemed for purposes of this section to mean only articles and items of personal property commonly worn on or about the human body, or carried by a person and normally thought to be associated with the person) when not held or used for profit; dead victuals laid away for family use and any other property or security exempted by any other provision of law; but no property shall be exempt from taxation which shall have been purchased or procured for the purpose of evading taxation, whether temporarily holding the same over the first day of the assessment year or otherwise: Provided, That real property which is exempt from taxation by this section shall be entered upon the assessor's books, together with the true and actual value thereof, but no taxes shall be levied upon the same or extended upon the assessor's books.

Notwithstanding any other provisions of this section, however, no language herein shall be construed to exempt from taxation any property owned by, or held in trust for, educational, literary, scientific, religious or
other charitable corporations or organizations, including
any public or private nonprofit foundation or corpora-
tion existing for the support of any college or university
located in West Virginia, unless such property, or the
dividends, interest, rents or royalties derived therefrom,
is used primarily and immediately for the purposes of
such corporations or organizations.

The tax commissioner shall, by issuance of regula-
tions, provide each assessor with guidelines to ensure
uniform assessment practices statewide to effect the
intent of this section.

CHAPTER 135
(H. B. 2890—By Delegate Rollins)

[Passed March 14, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eleven of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated
section thirteen, relating to ad valorem property
taxation; exempting certain tangible personal property
comprising inventory and warehouse goods from such
taxation when such property is in transit; listing
conditions when such property shall and shall not be
deprived of such exemption; providing that such
exemption shall not apply to certain inventories; and
requiring phase-in of exemption.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.


(a) Tangible personal property which is moving in
interstate commerce through or over the territory of the
state of West Virginia, or which was consigned from a point of origin outside the state to a warehouse, public or private, within the state for storage in transit to a final destination outside the state, whether specified when transportation begins or afterward, but in any case specified timely for exempt status determination purposes, shall not be deemed to have acquired a tax situs in West Virginia for purposes of ad valorem taxation and shall be exempt from such taxation, except as otherwise provided herein.

(b) Such property shall not be deprived of such exemption because while in the warehouse the personal property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged for delivery out of state, unless such activity results in a new or different product, article, substance or commodity, or one of different utility.

(c) Personal property of inventories of natural resources shall not be exempt from ad valorem taxation unless required by paramount federal law.

(d) The exemption allowed herein shall be phased in over a period of five consecutive assessment years, at the rate of one fifth of the assessed value of the property per assessment year, beginning the first day of July, one thousand nine hundred eighty-seven.

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CHAPTER 136

(H. B. 2275—By Mr. Speaker, Mr. Chambers, and Delegate Swann, by request of the Executive)

[Passed March 14, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact sections three and five, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to registration of businesses under the business registration tax; providing civil penalties for noncompliance; providing an effective date; time for
which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew; and farmers not required to register or pay tax.

Be it enacted by the Legislature of West Virginia:

That sections three and five, article twelve, 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 12. BUSINESS REGISTRATION TAX.

§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax; effective date.

§11-12-5. Time for which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew.

§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax; effective date.

(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 registra-
tion 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) Exemption from registration. — Any person engaging in or prosecuting business activity in this state:

(1) Who is not required by law to collect or withhold a tax administered under article ten of this chapter; and

(2) Who does not claim exemption from payment of taxes imposed by articles fifteen and fifteen-a of this chapter, shall be exempt from both registration and payment of the tax imposed by this article, if such person 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 otherwise required by this article.

(d) Exemptions from payment of tax. — Any person engaging in or prosecuting any business activity in this state who is required by law to collect or withhold any tax administered under article ten of this chapter; or who claims exemption from payment of the taxes imposed by articles fifteen and fifteen-a of this chapter, shall be required to obtain a business registration certificate, as herein before provided, but shall be exempt from payment of the tax levied by subsection (b), if such person is:

(1) A 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) An organization which qualifies, or would qualify, for exemption from federal income taxes under section 501 of the Internal Revenue Code of 1986, as amended.

(3) This state, or a political subdivision thereof, selling tangible personal property, admissions or services, when those activities compete with or may compete with the activities of another person.

(4) The United States, or an agency or instrumentality thereof, which is exempt from taxation by the states.
(5) A person engaged in the business of agriculture and farming: Provided, That no producer or grower selling products of the farm, garden or dairy and not included within the definition of business under subsection (a), section two of this article shall be required to obtain a business registration certificate or pay the business registration tax.

(6) A 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.

(e) Money penalty. — Any person required to obtain a business registration certificate under this section, who is exempt from payment of the tax, as provided in subsection (d), who does not obtain a registration certificate shall, in lieu of paying the penalty imposed by section nine, pay a penalty of fifteen dollars for each business location for which a certificate is needed: Provided, That application for business registration is made and the applicable money penalty tendered to the tax commissioner within fifteen days after such person receives written notice from the tax commissioner that such person is required to obtain a business registration certificate.

(f) Effective date. — The provisions of this section, as amended, shall apply to all businesses beginning the first day of July, one thousand nine hundred eighty-seven.

§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 the 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 a 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 became 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 cancelling 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 cancelled or suspended. This written notice shall be served on the taxpayer in the same manner as a notice of assessment.
47 is served under article ten of this chapter, not less than
48 twenty days prior to the date of such show cause
49 informal hearing. The taxpayer may appeal cancellation
50 or suspension of its business registration certificate in
51 the same manner as a notice of assessment is appealed
52 under article ten of this chapter: Provided, That the
53 filing of a petition for appeal shall not stay the effective
54 date of the suspension or cancellation. A stay may be
55 granted only after a hearing is held on a motion to stay
56 filed by the registrant, upon finding that state revenues
57 will not be jeopardized by the granting of the stay. The
58 tax commissioner may, in his discretion and upon such
59 terms as he may specify, agree to stay the effective date
60 of the cancellation or suspension until another date
61 certain.

62 (c) Refusal to renew. — The tax commissioner may
63 refuse to issue or renew a business registration certif-
64 icate if the registrant is delinquent in the payment of
65 any tax administered by the tax commissioner under
66 article ten of this chapter or the corporate license tax
67 imposed by this article, until the registrant pays in full
68 all such delinquent taxes including interest and applic-
69 able additions to tax and penalties. In his discretion
70 and upon such terms as he may specify, the tax
71 commissioner may enter into an installment payment
72 agreement with such taxpayer in lieu of the complete
73 payment. Failure of the taxpayer to fully comply with
74 the terms of the installment payment agreement shall
75 render the amount remaining due thereunder imme-
76 diately due and payable and the tax commissioner may
77 suspend or cancel the business registration certificate in
78 the manner hereinbefore provided.

CHAPTER 137
(S. B. 310—By Senator Shaw)

[Passed March 13, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section two-d, article thirteen, chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to the business and occupation tax imposed on public service or utility businesses; and exempting sales of electricity consumed in the manufacture of a ferroalloy from taxation.

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 to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

*§11-13-2d. Public service or utility business.

1 (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 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.

*Clerk's Note: This section was also amended by S.B. 536, which passed subsequent to this act.
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: And 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, or is separately metered and consumed in the manufacture of a ferroalloy in this state, and the rate reduction herein provided to the taxpayer shall be passed on to the manufacturer of the chlorine or ferroalloy. As used in this section, the term "ferroalloy" means any of various alloys of iron and one or more other elements used as a raw material in the production of steel: And provided further, That the term does not include the final production of steel;

(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.

CHAPTER 138
(H. B. 3202—By Delegate Farley)

[Passed May 12, 1987; in effect July 1, 1987. Approved by the Governor.]  

AN ACT to repeal section five-a, article fifteen, chapter eleven
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact
section five of said article, relating to the consumers
sales tax law and disallowing receipt of any discount or
reduction in the amount of tax to be remitted and paid
by a vendor on the basis that there has been early
remittance of such tax by such vendor to the tax
commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-5. Total amount collected is to be remitted.

1 No profit shall accrue to any person as a result of the

1 Clerk's Note: Section five-a (§11-15-5a) was enacted as a new section in S.
B. 536, which passed prior to this act.

2 Clerk's Note: This section was also amended by S. B. 536, which passed
prior to this act.
collection of the tax levied by this article notwithstanding the total amount of such taxes collected may be in excess of the amount for which such person would be liable by the application of the levy of five percent to the gross proceeds of his sales, and the total of all taxes collected by such person shall be returned and remitted to the tax commissioner as hereinafter provided.

CHAPTER 139

(H. B. 2787—By Mr. Speaker, Mr. Chambers, and Delegate Swann, by request of the Executive)

[Passed March 14, 1987; in effect ninety days from passage. 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 taxation; and providing an exemption from the consumers sales and services tax for items purchased with food stamps.

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.


1 The following sales and services shall be exempt:

2 (1) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

4 (2) Sales of textbooks required to be used in any of the schools of this state;

*Clerk's Note: This section was also amended by S. B. 536 and S. B. 760, which passed subsequent to this act.*
(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
(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;

(22) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. 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; and

(23) Any sales of tangible personal property or
services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in United States Code, 2011, et seq., as amended.

CHAPTER 140
(H. B. 3189—By Delegate Farley)

[Passed March 12, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; relating to the corporation net income tax; providing for updating the meaning of certain terms used in such act to conform with the meaning for federal tax purposes and making such updating retroactive to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-five.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, 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 effective prior to the first day of January, one thousand nine
hundred eighty-seven, shall be given effect in determining the taxes imposed by this article for any taxable year beginning the first day of January, one thousand nine hundred eighty-six, and thereafter, but no amendment to the laws of the United States effective on or after the first day of January, one thousand nine hundred eighty-seven, shall be given effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the "Federal Tax Reform Act of 1986" and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended and in effect when the "Federal Tax Reform Act of 1986" was enacted, that were not amended or repealed by the "Federal Tax Reform Act of 1986." Except when inappropriate, any references in any law, executive order, or other document:

(1) To the Internal Revenue Code of 1954 shall include reference to the Internal Revenue Code of 1986, and

(2) To the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

CHAPTER 141
(S. B. 760—Originating in the Senate Committee on Finance)

[Passed June 14, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact sections two, nine, nine-b, nine-c and nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine-e; to amend and reenact sections three, three-b, three-c and three-d, article fifteen-a of said chapter; and to amend section six, article twenty-four of said chapter, all relating to revision of state tax laws; refining the definitions of certain direct use items and the definition
of “transmission” for consumers sales and service tax and use tax purposes; amending the consumers sales and service tax exemption applicable to certain service providers and persons engaged in the business of commercial production of an agricultural product; clarifying and specifying the intended broad exemption to be applicable to businesses subject to gross receipts taxes for their purchases used either directly or indirectly in business in lieu of any limited exemption based on purchases directly used in business; providing for use of exemption certificates being furnished to vendors by persons engaged in the commercial production of an agricultural product, engaged in a business dispensing taxable services, by persons relying on advertising exemptions, or by purchasers of propane for poultry house heating purposes; authorizing tax commissioner to identify exempt purchases for which even furnishing of exemption certificates not required; requiring issuance by tax commissioner of direct pay permits, temporary or permanent, with payment being made to the tax commissioner rather than vendors; providing for apportionment of gross proceeds in respect of sales of property or service partly eligible for exemption and partly for nonexempt use in order to determine tax liability; providing for existing purchase contracts, executed and binding before date of terminated exemption and payments to be subsequently made or prepaid for subsequent periods on and after such termination date to remain exempt, with only new contracts entered into on and after the specified date to be subject to tax; deleting obsolete language from certain exemption in use tax law and that use tax law fully complement consumers sales tax law; and specifying applicability of obligations or securities of the United States or authorized for issuance by specified entities by the United States Congress for adjustment purposes under corporation net income tax law.

Be it enacted by the Legislature of West Virginia:

That sections two, nine, nine-b, nine-c and nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended
and reenacted; that said article be further amended by adding thereto a new section, designated section nine-e; that sections three, three-b, three-c and three-d, article fifteen-a of said chapter be amended and reenacted; and that section six, article twenty-four of said chapter be amended and reenacted, all to read as follows:

**Article**

15. Consumers Sales Tax.
15A. Use Tax.

**ARTICLE 15. CONSUMERS SALES TAX.**

§11-15-9b. Method of claiming exemptions, refunds of tax, credit against other taxes.
§11-15-9d. Direct pay permits.
§11-15-9e. Apportionment of purchase price; existing contracts protected.


1 For the purpose of this article:
2 (a) “Persons” shall mean any individual, partnership, association, corporation, municipal corporation, guardian, trustee, committee, executor or administrator.
3 (b) “Tax commissioner” shall mean the state tax commissioner.
4 (c) “Gross proceeds” shall mean the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses shall not be deducted, but any credit or refund made for goods returned may be deducted.
5 (d) “Sale,” “sales” or “selling” shall include any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor’s business and is made to the transferee or his agent for consumption or use or any other purpose.

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.*
(e) "Vendor" shall mean any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property.

(f) "Ultimate consumer" or "consumer" shall mean a person who uses or consumes services or personal property.

(g) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(h) "Tax" shall include all taxes, interest and penalties levied hereunder.

(i) "Service" or "selected service" shall include all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include contracting, personal services or the services rendered by an employee to his employer or any service rendered for resale.

(j) "Purchaser" shall mean a person who purchases tangible personal property or a service taxed by this article.

(k) "Personal service" shall include those:

(1) Compensated by the payment of wages in the ordinary course of employment; and

(2) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(l) "Taxpayer" shall mean any person liable for the tax imposed by this article.

(m) "Drugs" shall include all sales of drugs or appliances to a purchaser, upon prescription of a
physician or dentist and any other professional person licensed to prescribe.

(n) (1) "Directly used or consumed" in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall mean used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.

(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall include only:

(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources or resulting from contracting activity;

(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources or which is the subject of contracting activity;

(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production, or production of natural resources or which is the subject of contracting activity;

(D) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(E) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;
(F) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources or which is the subject of contracting activity;

(G) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(H) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(I) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(J) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources or which is the subject of contracting activity or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(K) Maintenance or repair of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(L) Storage, removal or transportation of economic waste resulting from the activities of contracting, manufacturing, transportation, communication, transmission or the production of natural resources;

(M) Pollution control or environmental quality or protection activity directly relating to the activities of contracting, manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the
activities of contracting, manufacturing, transportation, communication, transmission or the production of natural resources; or

(N) Otherwise be used as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity.

(3) Uses of property or services which would not constitute direct use or consumption in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall include, but not be limited to:

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

(D) Production planning, scheduling of work, or inventory control;

(E) Marketing, general management, supervision, finance, training, accounting and administration; or

(F) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity, rather than an integral and essential part of such activities.

(o) "Contracting" shall mean the furnishing of work, or both materials and work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. For purposes of this definition, the term "structure" shall include, but not be limited to, everything built up or composed of parts joined together in some definite manner and attached to real property, or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time.
(p) "Manufacturing" shall mean a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(q) "Transportation" shall mean the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(r) "Transmission" shall mean the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(s) "Communication" shall mean all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and shall include commercial broadcast radio, commercial broadcast television and cable television.

(t) "Production of natural resources" shall mean the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.


1 The following sales and services shall be exempt:

2 (a) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

3 (b) Sales of textbooks required to be used in any of the schools of this state;

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.
(c) 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;

(d) 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;

(e) 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;

(f) Sales of property or services to corporations or organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1986, 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 in the activities for which such organizations qualify as tax exempt organization under the Internal Revenue Code by these organizations and shall not apply to purchases of gasoline or special fuel;

(g) 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: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-seven, the exemption provided in this subsection shall apply only to services, machinery, supplies and mate-
rials directly used or consumed in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources in the businesses or organizations named above and shall not apply to purchases of gasoline or special fuel;

(h) 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;

(i) Sales of tangible personal property and services rendered for use or consumption in connection with the business of dispensing a service subject to tax under 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;

(j) 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;

(k) Sales of property or services to nationally char­
ered 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;

(l) 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;

(m) Sales of newspapers when delivered to consumers by route carriers;

(n) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(o) Sales of radio and television broadcasting time, preprinted advertising circulars, and newspaper and outdoor advertising space for the advertisement of goods or services;

(p) Sales and services performed by day care centers;

(q) 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 1986, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1986, as amended;

(r) 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 1986, as amended: Provided, That sales of gasoline and special fuel shall be taxable;

(s) 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;

(t) 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;

(u) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. 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;

(v) Notwithstanding the provisions of subsection (g) of this section or any provisions of this article to the contrary, sales of property and services to persons subject to tax under article thirteen, thirteen-a or thirteen-b of this chapter: Provided, That the exemption herein granted shall apply both to property or services directly or not directly used or consumed in businesses, the gross receipts from which are subject to tax under such articles but shall not apply to purchases of gasoline or special fuel;

(w) Sales of propane to consumers for poultry house heating purposes, with any seller to such consumer who may have prior paid such tax in his price, to not pass on the same to the consumer, but to make application and receive refund of such tax from the tax commissioner, pursuant to rules and regulations which shall be promulgated by the tax commissioner; and notwithstanding the provisions of section eighteen of this article or any other provisions of such article to the contrary;

(x) Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in United States Code, 2011, et seq., as amended;

(y) Sales of tickets for activities sponsored by elementary and secondary schools located within this state; and

(z) Sales of electronic data processing services and related software: Provided, That for the purposes of this subsection (z) "electronic data processing services" means (1) the processing of another's data, including all processes incident to processing of data such as key-punching, keystroke verification, rearranging, or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, whether these pro-
cesses are done by the same person or several persons; and (2) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment.

*§11-15-9b. Method for claiming exemptions, refunds of tax, credit against other taxes.

(a) Any person having a right or claim to any exemption set forth in section nine of this article except those exemptions set forth in subsections (a), (b), (c), (d), (h), (i), (j), (m), (n), (o), (p), (r), (s), (t), (u), (w), (x) and (y) of said section nine or the exemption of sales of property or services to churches under subsection (e) of said section nine shall pay to the vendor the tax imposed by this article and may exercise or assert such exemption only in accordance with subsection (b) or subsection (c) of this section.

(b) Any person who has paid the tax imposed by this article and who may lawfully claim exemption from the tax under a subsection of section nine of this article not enumerated in subsection (a) of this section may exercise or assert such claim by filing a claim for refund of consumers sales and service tax overpayments on such form and in such manner as the tax commissioner may require and in accordance with the requirements of this section. The tax commissioner shall cause a refund to be made within thirty days of receipt of a lawful and accurate claim.

(c) In lieu of filing a claim for refund of consumers sales and service tax overpayments, the taxpayer may, at his option, file a claim for credit on such form and in such manner as the tax commissioner may require and credit the amount of consumers sales and service tax overpayments against certain payments of tax due in accordance with the requirements of this section as follows:

(1) If the taxpayer is required to remit the tax imposed under this article or article fifteen-a of this chapter pursuant to section five or subsection (b) of section nine-d of this article or subsection (b) of

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.
section three-d of said article fifteen-a, the taxpayer may credit the amount of consumers sales and service tax overpayments against the remittance of the tax imposed under said articles otherwise due;

(2) If the taxpayer is subject to the tax imposed under article thirteen of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of part (1) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen otherwise due; or

(3) If the taxpayer is subject to the tax imposed under article twelve-a of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1) and (2) of this subsection against the taxpayer's annual or semiannual remittance of the tax imposed under said article twelve-a otherwise due; or

(4) If the taxpayer is subject to the tax imposed under article thirteen-a of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2) and (3) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen-a otherwise due; or

(5) If the taxpayer is subject to the tax imposed under article thirteen-b of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3) and (4) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen-b otherwise due; or

(6) If the taxpayer is subject to the tax imposed under article twenty-four of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4) and (5) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-four and otherwise due under section seventeen, article twenty-four of this chapter; or
(7) If the taxpayer is subject to the tax imposed under article twenty-one of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5) and (6) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-one and otherwise due under section fifty-six, article twenty-one of this chapter; or

(8) If the taxpayer is subject to the tax imposed under article twenty-three of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6) and (7) of this subsection against the taxpayer's annual remittance of the tax imposed under said article twenty-three and otherwise due; or

(9) If the taxpayer is required to deduct and withhold tax under article twenty-one of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection against the taxpayer's monthly remittance of the tax withheld under said article twenty-one and otherwise due.

(d) Any person asserting or exercising a claim of exemption from the tax imposed by this article under subsection (b) or (c) of this section shall file with the tax commissioner an application for exemption in such form as the tax commissioner shall prescribe and such affidavits, invoices, sales slips, records or documents as the tax commissioner may require to prove or verify the taxpayer's right and entitlement to such exemption. The tax commissioner may inspect or examine the records, books, papers, documents, affidavits, invoices, sales slips and records of a taxpayer or any other person to verify the truth and accuracy of any report or return or to ascertain whether the tax imposed by this article has been paid.

In addition to the powers of the tax commissioner set forth in article ten of this chapter, as a further means of obtaining the records, books, papers, documents,
affidavits, sales slips or invoices of a taxpayer or any
other person and ascertaining the amount of taxes paid
or due under this article or any report, form, document
or affidavit required under this article, the commis-
sioner shall have the power to examine witnesses under
oath; and if any witness shall fail or refuse at the request
of the commissioner to grant access to the books,
records, papers, documents, affidavits, sales slips or
invoices requested by the commissioner, the commis-
sioner shall certify the facts and the names to the circuit
court of the county having jurisdiction over the party
and such court shall thereupon issue a subpoena duces
tecum to such party to appear before the commissioner,
at a place designated within the jurisdiction of such
court, on a day fixed.

(e) All claims for refund of consumers sales and
service tax overpayments under subsection (b) of this
section shall be filed within the time limitation for filing
claims for refund set forth in section fourteen, article
ten of this chapter. Any claim for such refund or claim
of entitlement to such refund made or asserted after the
said time limitation shall be null and void, and if the
consumers sales and service tax overpayment has not
otherwise been credited against tax remittances in
accordance with this section, the said claims shall be
forfeited.

(f) Any credit of consumers sales and service tax
overpayments against taxes under subsection (c) of this
section shall be taken within one year after the payment
of the said consumers sales and service tax by the
consumer to the vendor. Any such credit or claim of
entitlement to such credit made or asserted more than
one year after the payment of such tax by the consumer
to the vendor shall be null and void, and such consumers
sales and service tax overpayments shall be forfeited
unless refunded under subsection (b) of this section.

(g) Any assignment of the right or entitlement to a
refund or credit arising under this section shall be
subject to strict proof, and any assignee claiming a right
or entitlement to an assigned refund or credit shall
submit an affidavit in such form as the tax commis-
sioner shall prescribe signed by the assignor acknowledging the assignment. The assignee shall attest to the assignment and the terms thereof on his signed application filed under subsection (d) of this section for refund or credit, and will be subject to the penalties provided under West Virginia law for perjury for any falsehood set forth therein and will be subject to the penalties set forth in article nine of this chapter for any violation thereof. Except as provided in this subsection (g), no payment of a refund arising under this section shall be made to any person other than the taxpayer making the original overpayment of consumers sales and service tax.

(h) No refund shall be due and no credit shall be allowed under this section unless the taxpayer or assignee shall have filed a claim for refund or a claim for credit, as appropriate, with the tax commissioner in accordance with this section.

(i) Any claim for a refund of consumers sales and service tax overpayments or for a tax credit for consumers sales and service tax overpayments which is not timely filed or not filed in proper form or in accordance with the requirements of this section shall not be construed to constitute a moral obligation of the state of West Virginia for payment. No overpayment of consumers sales and service tax made under this section shall be subject to subsection (d), section seventeen, article ten of this chapter or subdivision (1), subsection (e), section seventeen, article ten of this chapter.

(j) The provisions of this section become effective after the thirtieth day of June, one thousand nine hundred eighty-seven.


1 Persons having a right or claim to any exemption set forth in subsections (a), (b), (c), (d), (h), (i), (j), (m), (n), (o), (p), (r), (s), (t), (u), (w), (x) and (y), section nine of this article shall, in lieu of paying the tax imposed by this article, execute a certificate of exemption in such

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.
form as the tax commissioner may require, and such
executed exemption certificate shall be delivered to the
vendor in such manner as the tax commissioner may
require: Provided, That the tax commissioner may
identify exemptions for which exemption certificates are
not required and as soon as practical may specify by
regulation exemptions for which exemption certificates
are not required.

*§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this
article, the tax commissioner shall, pursuant to rules
and regulations promulgated as soon as practical by the
tax commissioner in accordance with article three,
chapter twenty-nine-a of this code, authorize a person
(as defined in section two) that is a user, consumer,
distributor or lessee to which sales or leases of tangible
personal property are made or services provided, to pay
any tax levied by this article or article fifteen-a of this
chapter directly to the tax commissioner and waive the
collection of the tax by that person's vendor. No such
authority shall be granted or exercised except upon
application to the tax commissioner and after issuance
by the tax commissioner of a direct pay permit, except
that a temporary permit may immediately and provi-
sonally be authorized by the tax commissioner in
respect of any interim or transitional period, with either
termination of such temporary permit thereafter or a
permanent permit to subsequently issue as promptly as
practicable, for purchases made from the vendor or
vendors identified or specified in a manner acceptable
to and as authorized by the tax commissioner. Upon
issuance of such direct pay permit, payment of the tax
imposed or assertion of the exemptions allowed by this
article or article fifteen-a of this chapter on sales and
leases of tangible personal property and sales of taxable
services from such vendors shall be made directly to the
tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every
permit holder shall make and file with the tax commis-
sioner a return for the preceding month in the form

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.
prescribed by the tax commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of tax due from the permit holder, which amount shall be paid to the tax commissioner with such return, and such other information as the tax commissioner deems necessary. The tax commissioner, upon written request by the permit holder, may grant a reasonable extension of time for the making and filing of returns and paying the tax. Interest on such tax shall be chargeable on every such extended payment at the rate determined in accordance with section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section shall continue to be valid until expiration of the business's registration year under article twelve of this chapter. This permit shall automatically be renewed when the business's business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has not been canceled shall not be required to pay the tax to the vendor as otherwise provided in this article or article fifteen-a of this chapter. Such persons shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of such notice, such vendor shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases, or storage of tangible personal property and sales of services to such permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each such purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to
the person who previously held such permit, and such person shall promptly so notify in writing vendors from whom purchases, leases and storage of tangible personal property are made of such cancellation or surrender. Upon receipt of such notice, the vendor shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases or storage of tangible personal property, thereafter made to or for such person.

§11-15-9e. Apportionment of purchase price; existing contracts protected.

Whenever a purchaser will use acquired tangible personal property, a service, or the results of a service for both exempt and nonexempt purposes, the gross proceeds of such sale paid to the vendor for such property or service shall be apportioned between the exempt and nonexempt uses, in a manner established as reasonable by the tax commissioner, by regulations the tax commissioner may prescribe, for the purpose of determining the tax liability in respect of such purchase.

Contracts existing, executed, and binding prior to the first day of July, one thousand nine hundred eighty-seven, for the purchase of tangible personal property or services, by lease or otherwise, and in connection with which an exemption from tax was applicable to such purchase prior to such date but terminated on and after the same; no new tax liability shall arise in respect of payments to be subsequently made under such a contract nor to payments prepaid thereunder for any periods subsequent to such date, but only new contracts entered into on and after the first day of July, one thousand nine hundred eight-seven shall be liable for tax under the provisions of this article or of article fifteen-a of this chapter where such a prior applicable exemption has been so terminated.

ARTICLE 15A. USE TAX.

§11-15A-3b. Method for claiming exemptions, refunds of tax, credit against other taxes.
§11-15A-3c. Delivery of a certificate in lieu of tax.
§11-15A-3d. Direct pay permits.

(a) The use in this state of the following tangible personal property and services is hereby specifically exempted from the tax imposed by this article to the extent specified:

(1) All articles of tangible personal property brought into the state of West Virginia by a nonresident individual thereof for his or her use or enjoyment while temporarily within this state or while passing through this state, except gasoline and special fuel: Provided, That fuel contained in the supply tank of a motor vehicle that is not a motor carrier shall not be taxable.

(2) Tangible personal property or services, the gross receipts from the sale of which are exempt from the sales tax by the terms of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and the property or services are being used for the purpose for which it was exempted.

(3) Tangible personal property or services, the gross receipts or the gross proceeds from the sale of which are required to be included in the measure of the tax imposed by article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and upon which the tax imposed by said article fifteen has been paid.

(4) Tangible personal property or services, the sale of which in this state is not subject to the West Virginia consumers sales tax.

(5) Mobile homes utilized by the owners thereof as their principal year-round residence and dwelling: Provided, That use of these mobile homes shall be subject to tax at the three percent rate.

(b) The provisions of this section, as amended, shall apply on and after the first day of July, one thousand nine hundred eighty-seven.

*§11-15A-3b. Method for claiming exemptions, refunds of tax, credit against other taxes.

(a) Any person having a right or claim to an exemp-

* Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.
tion from the tax imposed by this article by reason of any exemption set forth in section nine, article fifteen of this chapter except those exemptions set forth in subsections (a), (b), (c), (d), (h), (i), (j), (m), (o), (p), (r), (s), (t), (u), (w), (x) and (y) of said section nine shall pay to the vendor the tax imposed by this article and may exercise or assert such exemption only in accordance with subsection (b) or subsection (c) of this section.

(b) Any person who has paid the tax imposed by this article and who may lawfully claim under section three of this article any exemption set forth under a subsection of section nine of article fifteen not enumerated in subsection (a) of this section may exercise or assert such claim by filing a claim for refund of use tax overpayments on such form and in such manner as the tax commissioner may require and in accordance with the requirements of this section.

(c) In lieu of filing a claim for refund of use tax overpayments, the taxpayer may, at his option, file a claim for credit on such form and in such manner as the tax commissioner may require and credit the amount of use tax overpayments against certain payments of tax due in accordance with the requirements of this section as follows:

(1) If the taxpayer is required to remit the tax imposed under this article or article fifteen of this chapter pursuant to section five or subsection (b) of section nine-d of said article fifteen or subsection (b) of section three-d of this article, the taxpayer may credit the amount of use tax overpayments against the remittance of the tax imposed under said articles otherwise due;

(2) If the taxpayer is subject to the tax imposed under article thirteen of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of part (1) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen otherwise due; or

(3) If the taxpayer is subject to the tax imposed under article twelve-a of this chapter, the taxpayer may credit
the amount of use tax overpayments remaining after
application of parts (1) and (2) of this subsection against
the taxpayer's annual or semiannual remittance of the
tax imposed under said article twelve-a otherwise due;
or

(4) If the taxpayer is subject to the tax imposed under
article thirteen-a of this chapter, the taxpayer may
credit the amount of use tax overpayments remaining
after application of parts (1), (2) and (3) of this
subsection against the taxpayer's quarterly or monthly
remittance of the tax imposed under said article
thirteen-a otherwise due; or

(5) If the taxpayer is subject to the tax imposed under
article thirteen-b of this chapter, the taxpayer may
credit the amount of use tax overpayments remaining
after application of parts (1), (2), (3) and (4) of this
subsection against the taxpayer's quarterly or monthly
remittance of the tax imposed under said article
thirteen-b otherwise due; or

(6) If the taxpayer is subject to the tax imposed under
article twenty-four of this chapter, the taxpayer may
credit the amount of use tax overpayments remaining
after application of parts (1), (2), (3), (4) and (5) of this
subsection against the taxpayer's installment of esti-
mated tax imposed under said article twenty-four and
otherwise due under section seventeen, article twenty-
four of this chapter; or

(7) If the taxpayer is subject to the tax imposed under
article twenty-one of this chapter, the taxpayer may
credit the amount of use tax overpayments remaining
after application of parts (1), (2), (3), (4), (5) and (6) of
this subsection against the taxpayer's installment of
estimated tax imposed under said article twenty-one and
otherwise due under section fifty-six, article twenty-one
of this chapter; or

(8) If the taxpayer is subject to the tax imposed under
article twenty-three of this chapter, the taxpayer may
credit the amount of use tax overpayments remaining
after application of parts (1), (2), (3), (4), (5), (6) and (7)
of this subsection against the taxpayer's annual remit-
(9) If the taxpayer is required to deduct and withhold tax under article twenty-one of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection against the taxpayer's monthly remittance of the tax withheld under said article twenty-one and otherwise due.

(d) Any person asserting or exercising a claim of exemption from the tax imposed by this article under subsection (b) or (c) of this section shall file with the tax commissioner an application for exemption in such form as the tax commissioner shall prescribe and such affidavits, invoices, sales slips, records or documents as the tax commissioner may require to prove or verify the taxpayer's right and entitlement to such exemption. The tax commissioner may inspect or examine the records, books, papers, documents, affidavits, sales slips and invoices of a taxpayer or any other person to verify the truth and accuracy of any report or return or to ascertain whether the tax imposed by this article or article fifteen of this chapter has been paid.

In addition to the powers of the tax commissioner set forth in article ten of this chapter, as a further means of obtaining the records, books, papers, documents, affidavits, sales slips or invoices of a taxpayer or any other person and ascertaining the amount of taxes paid or due under this article or article fifteen of this chapter or any report, form, document or affidavit required under this article or article fifteen of this chapter, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records, papers, documents, affidavits, sales slips or invoices requested by the commissioner, the commissioner shall certify the facts and the names to the circuit court of the county having jurisdiction of the party, and such court shall thereupon issue a subpoena duces tecum to such party to appear before the commissioner, at a
place designated within the jurisdiction of such court, on a day fixed.

(e) All claims for refund of use tax overpayments under subsection (b) of this section shall be filed within the time limitation for filing claims for refund set forth in section fourteen, article ten of this chapter. Any claim for such refund or claim of entitlement to such refund made or asserted after the said time limitation shall be null and void, and if the use tax overpayment has not otherwise been credited against tax remittances in accordance with this section, the said claims shall be forfeited.

(f) Any credit of use tax overpayments against taxes under subsection (c) of this section shall be taken within one year after the payment of the tax by the taxpayer to the vendor. Any such credit or claim of entitlement to such credit made or asserted more than one year after the payment of such tax by the taxpayer to the vendor shall be null and void, and such tax overpayments shall be forfeited.

(g) Any assignment of the right or entitlement to a refund or credit arising under this section shall be subject to strict proof, and any assignee claiming a right or entitlement to an assigned refund or credit shall submit an affidavit in such form as the tax commissioner shall prescribe signed by the assignor acknowledging the assignment. The assignee shall attest to the assignment and the terms thereof of his signed application filed under subsection (e) of this section for refund or credit, and will be subject to the penalties provided under West Virginia law for perjury for any falsehood set forth therein and will be subject to the penalties set forth in article nine of this chapter for any violation thereof. Except as provided in this subsection (h), no payment of a refund arising under this section shall be made to any person other than the taxpayer making the original overpayment of consumers sales and service tax.

(h) No refund shall be due and no credit shall be allowed unless the taxpayer or assignee shall have filed
a claim for refund or a claim for credit, as appropriate, with the tax commissioner in accordance with this section.

(i) Any claim for a refund of use tax overpayments or a tax credit for use tax overpayments which is not timely filed or not filed in proper form or in accordance with the requirements of this section shall not be construed to constitute a moral obligation of the state of West Virginia for payment. No overpayment of use tax made under this section shall be subject to subsection (d), section seventeen, article ten of this chapter, or subdivision (1), subsection (e), section seventeen, article ten of this chapter.

(j) The provisions of this section become effective after the thirtieth day of June, one thousand nine hundred eighty-seven.

*§11-15A-3c. Delivery of a certificate of exemption in lieu of tax.

Persons having a right or claim under section three of this article, to any exemption set forth in subsections (a), (b), (c), (d), (h), (i), (j), (m), (n), (o), (p), (r), (s), (t), (u), (w), (x) and (y), section nine, article fifteen of this chapter shall, in lieu of paying the tax imposed by this article, execute a certificate of exemption in such form as the tax commissioner may require, and such executed exemption certificate shall be delivered to the vendor in such manner as the tax commissioner may require: Provided, That the tax commissioner may identify exemptions for which exemption certificates are not required and as soon as practical may specify by regulation exemptions for which exemption certificates are not required.

*§11-15A-3d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner shall, pursuant to rules and regulations promulgated as soon as practical by the tax commissioner in accordance with article three, chapter twenty-nine-a of this code, authorize a person

*Clerk's Note: These sections were also amended by S.B. 536, which passed prior to this act.*
(as defined in section two of article fifteen) that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided to pay any tax levied by this article or article fifteen of this chapter directly to the tax commissioner and waive the collection of the tax by that person's vendor. No such authority shall be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit, except that a temporary permit may immediately and provisionally be authorized by the tax commissioner in respect of any interim or transitional period, with either termination of such temporary permit thereafter or a permanent permit to subsequently issue as promptly as practicable, for purchases made from the vendor or vendors identified or specified in a manner acceptable to and as authorized by the tax commissioner. Upon issuance of such direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen of this chapter on sales and leases of tangible personal property and sales of taxable services from such vendors shall be made directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of tax due from the permit holder, which amount shall be paid to the tax commissioner with such return, and such other information as the tax commissioner deems necessary. The tax commissioner, upon written request by the permit holder, may grant a reasonable extension of time for the making and filing of returns and paying the tax. Interest on such tax shall be chargeable on every such extended payment at the rate determined in accordance with section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section shall continue to be valid until expiration of the business's
registration year under article twelve of this chapter. This permit shall automatically be renewed when the business's business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has not been canceled shall not be required to pay the tax to the vendor as otherwise provided in this article or article fifteen of this chapter. Such persons shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of such notice, such vendor shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases or storage of tangible personal property and sales of services to such permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each such purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held such permit, and such person shall promptly so notify in writing vendors from whom purchases, leases and storage of tangible personal property are made of such cancellation or surrender. Upon receipt of such notice, the vendor shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases, or storage of tangible personal property, thereafter made to or for such person.

ARTICLE 24. CORPORATION NET INCOME TAX.

*§11-24-6. Adjustments in determining West Virginia taxable income.

1 (a) General. — In determining West Virginia taxable income.

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.
income of a corporation, its taxable income as defined for federal income tax purposes shall be adjusted and determined before the apportionment provided by section seven of this article, by the items specified in this section.

(b) Adjustments increasing federal taxable income. — There shall be added to federal taxable income, unless already included in the computation of federal taxable income, the following items except that adjustment (5) shall be required only with respect to tax periods ending after the thirty-first day of December, one thousand nine hundred eighty-one:

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal taxable income and not credited against federal income tax, and the taxes imposed by this state for which credit against the taxes imposed by section four is allowed by section nine; and

(4) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal taxable income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: Three-year property—no modifications; five-year property—ten percent; ten-year property—fifteen percent; fifteen-year public utility property—twenty-five percent; and fifteen-year or eighteen-year real property—thirty-five percent: Provided, That this modification shall not apply to any
person whose federal deduction is determined by the use
of the straight line method, or to any taxable year
beginning after the thirtieth day of June, one thousand
nine hundred eighty-seven.

(c) Adjustments decreasing federal taxable income. —
There shall be subtracted from federal taxable income:

(1) Any gain from the sale or other disposition of
property having a higher fair market value on the first
day of July, one thousand nine hundred sixty-seven, than
the adjusted basis at said date for federal income tax
purposes: Provided, That the amount of this adjustment
is limited to that portion of any such gain which does
not exceed the difference between such fair market
value and such adjusted basis;

(2) The amount of any refund or credit for overpay-
ment of income taxes imposed by this state or any other
taxing jurisdiction, to the extent properly included in
gross income for federal income tax purposes;

(3) The amount of dividends received, to the extent
included in federal taxable income: Provided, That this
modification shall not be made for taxable years
beginning after the thirtieth day of June, one thousand
nine hundred eighty-seven;

(4) Thirty-seven and one-half percent of the excess of
net long-term capital gain over net short-term capital
loss as defined in the laws of the United States:
Provided, That this modification shall not be made for
taxable years beginning after the thirtieth day of June,
one thousand nine hundred eighty-seven;

(5) The amount added to federal taxable income due
to the elimination of the reserve method for computation
of the bad debt deduction; and

(6) The full amount of interest expense actually
disallowed in determining federal taxable income which
was incurred or continued to purchase or carry obliga-
tions or securities of any state or of any political
subdivision thereof.

(d) Adjustment resulting from recomputation of net
operating loss deduction. — In determining the West Virginia taxable income of a corporation entitled to a net operating loss deduction for the taxable year for federal income tax purposes, there shall be added to or subtracted from the federal taxable income the amount of an adjustment reflecting a recomputation of such net operating loss deduction in which the adjustments required by subsections (b) and (c) are made for each taxable year involved in the computation of such net operating loss deduction.

(e) Special adjustments for expenditures for water and air pollution control facilities.

(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be:

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities and air pollution control facilities as defined in section 48 (h) (12) (B) and (C) of the Internal Revenue Code, and

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope of application of such election shall be defined, as the tax commissioner may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation
and apportionment under section seven, the adjustments
prescribed in paragraphs (A) and (B), subdivision (1) of
this subsection shall (instead of being made to the
taxpayer's federal taxable income before allocation and
apportionment thereof as provided in section seven) be
made to the portion of the taxpayer's net income,
computed without regard to such adjustments, allocated
and apportioned to this state in accordance with the
amounts of any allowances for depreciation and amor-
tization of such water pollution control facilities and air
pollution control facilities, as so defined, to the extent
deductible in determining federal taxable income.

(f) Allowance for certain government obligations and
obligations secured by residential property. — The West
Virginia taxable income of a taxpayer subject to this
article as adjusted in accordance with parts (b), (c), (d)
and (e) of this section shall be further adjusted by
multiplying such taxable income after such adjustment
by parts (b), (c), (d) and (e) by a fraction equal to one
minus a fraction:

(1) The numerator of which is the sum of the average
of the monthly beginning and ending account balances
during the taxable year (account balances to be deter-
mined at cost in the same manner that such obligations,
investments and loans are reported on Schedule L of the
Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or
of any agency, authority, commission or instrumentality
of the United States and any other corporation or entity
created under the authority of the United States
Congress for the purpose of implementing or furthering
an objective of national policy;

(B) Obligations or securities of this state and any
political subdivision or authority thereof;

(C) Investments or loans primarily secured by mort-
gages, or deeds of trust, on residential property located
in this state and occupied by nontransients; and

(D) Loans primarily secured by a lien or security
agreement on residential property in the form of a
mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(2) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of Federal Form 1120, which are filed by the taxpayer with the Internal Revenue Service.

CHAPTER 142
(H. B. 3204—By Delegate Farley)

[Passed June 14, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four-e, eleven, twelve, fifty-one and seventy-one, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to personal income taxes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; changing certain applicable rates; allowing married persons an election to file separate West Virginia personal income tax returns even though they file a joint return for federal income tax purposes for the taxable year; providing a separate rate table for married persons filing separate returns; technical amendments clarifying certain reduction modifications; clarifying that employer withholding taxes are to be calculated using the new, higher personal exemption allowed for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and providing for these amendments to apply to and for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

Be it enacted by the Legislature of West Virginia:

That sections four-e, eleven, twelve, fifty-one and seventy-one, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended to read as follows:
ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4e. Rate of tax—Taxable years beginning on or after January 1, 1987.

§11-21-11. West Virginia taxable income of resident individual.

§11-21-12. West Virginia adjusted gross income of resident individual.

§11-21-51. Returns and liabilities.

§11-21-71. Requirement of withholding tax from wages.

*§11-21-4e. Rate of tax — Taxable years beginning on or after January 1, 1987.

(a) Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, estates and trusts. — The tax imposed by section three of this article on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>West Virginia taxable income is:</th>
<th>The tax is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $10,000</td>
<td>3% of the taxable income</td>
</tr>
<tr>
<td>Over $10,000 but not over $25,000</td>
<td>$300.00 plus 4% of excess over $10,000</td>
</tr>
<tr>
<td>Over $25,000 but not over $40,000</td>
<td>$900.00 plus 4.5% of excess over $25,000</td>
</tr>
<tr>
<td>Over $40,000 but not over $60,000</td>
<td>$1,575.00 plus 6% of excess over $40,000</td>
</tr>
<tr>
<td>Over $60,000</td>
<td>$2,775.00 plus 6.5% of excess over $60,000</td>
</tr>
</tbody>
</table>

(b) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by section three of this article on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

---

* Clerk's Note: This section was also amended by S. B. 536, which passed prior to this act.
If the West Virginia taxable income is:

Not over $5,000
Over $5,000 but not over $12,500
Over $12,500 but not over $20,000
Over $20,000 but not over $30,000
Over $30,000

The tax is:
3% of the taxable income
$150.00 plus 4% of excess
$450.00 plus 4.5% of excess over $5,000
$787.50 plus 6% of excess over $12,500
$1,387.50 plus 6.5% of excess over $20,000

(c) Applicability of this section. — The provisions of this section, as amended by this act, shall be applicable in determining the rate of tax imposed by this article for all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six, and shall be in lieu of the rates of tax specified in section four-d of this article.

§11-21-11. West Virginia taxable income of resident individual.

(a) General. — The West Virginia taxable income of a resident individual shall be his West Virginia adjusted gross income less his West Virginia personal exemptions, as determined under this part.

(b) Husband and wife.

(1) If the federal taxable income of husband and wife is determined on a separate federal return, their West Virginia taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

(A) Their tax shall be determined on their joint West Virginia taxable income, or
(B) Separate taxes may be determined on their separate West Virginia taxable incomes if they so elect if they comply with the requirements of the tax commissioner in setting forth information on a single form or on separate forms, as may be required by the tax commissioner.

(3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the tax commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

(c) Effective date. — This section, as amended by this act, shall apply to all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General. — The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income unless already included therein the following items, except that modifications (5), (6) and (7) shall be required only with respect to tax periods ending on or after the first day of January, one thousand nine hundred eighty-two:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;
(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount allowed as a deduction from federal gross income under section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and

(7) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal adjusted gross income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: Three-year property—no modification; five-year property—ten percent; ten-year property—fifteen percent; fifteen-year public utility property—twenty-five percent; and fifteen-year...
real property—thirty-five percent: Provided, That this
modification shall not apply to any person whose federal
deduction is determined by the use of the straight line
method: Provided, however, That this modification shall
not be made for taxable years beginning after the thirty-
first day of December, one thousand nine hundred
eighty-six;

(c) Modifications reducing federal adjusted gross
income. — There shall be subtracted from federal
adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States
and its possessions to the extent includable in gross
income for federal income tax purposes;

(2) Interest or dividend income on obligations or
securities of any authority, commission or instrumentality
of the United States to the extent includible in gross
income for federal income tax purposes but exempt
from state income taxes under the laws of the United
States, including federal interest dividends paid to
shareholders of a regulated investment company, under
section 852 of the Internal Revenue Code for taxable
years ending after the thirtieth day of June, one
thousand nine hundred eighty-seven;

(3) Any gain from the sale or other disposition of
property having a higher fair market value on the first
day of January, one thousand nine hundred sixty-one,
than the adjusted basis at said date for federal income
tax purposes: Provided, That the amount of this
adjustment is limited to that portion of any such gain
which does not exceed the difference between such fair
market value and such adjusted basis: Provided,
however, That if such gain is considered a long-term
capital gain for federal income tax purposes, the
modification shall be limited to forty percent of such
portion of the gain: Provided further, That this modifi-
cation shall not be made for taxable years beginning
after the thirty-first day of December, one thousand nine
hundred eighty-six;

(4) The amount of any refund or credit for overpay-
ment of income taxes imposed by this state, or any other
taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the public employees retirement system, the department of public safety death, disability and retirement fund, the state teachers retirement system and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes: Provided, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first two thousand dollars of benefits received under the public employees retirement system, the state teachers retirement system and all forms of military retirement including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any police or firemen's retirement system, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(7) Federal adjusted gross income in the amount of six thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he is still permanently and totally disabled, a copy of the original
138 certificate is acceptable as proof of disability. A copy of
139 the form filed for the federal disability income tax
140 exclusion is acceptable: Provided, however, That
141 (i) Where the total modification under subdivisions
142 (1), (2), (5) and (6) of this subsection is eight thousand
143 dollars per person or more, no deduction shall be
144 allowed under this subdivision, and
145 (ii) Where the total modification under subdivisions
146 (1), (2), (5) and (6) of this subsection is less than eight
147 thousand dollars per person, the total modification
148 allowed under this subdivision for all gross income
149 received by such person shall be limited to the difference
150 between eight thousand dollars and the sum of
151 modifications under such subdivisions;
152 (8) Federal adjusted gross income in the amount of six
153 thousand dollars received from any source after the
154 thirty-first day of December, one thousand nine hundred
155 eighty-six, by the surviving spouse of any person who
156 had attained the age of sixty-five or who had been
157 certified as permanently and totally disabled, to the
158 extent includible in federal adjusted gross income for
159 federal tax purposes: Provided, That
160 (i) Where the total modification under subdivisions
161 (1), (2), (5), (6) and (7) of this subsection is eight thousand
162 dollars or more, no deduction shall be allowed under this
163 subdivision, and
164 (ii) Where the total modification under subdivisions
165 (1), (2), (5), (6) and (7) of this subsection is less than eight
166 thousand dollars per person, the total modification
167 allowed under this subdivision for all gross income
168 received by such person shall be limited to the difference
169 between eight thousand dollars and the sum of such
170 subdivisions;
171 (9) Any pay or allowances received, after the thirty-
172 first day of December, one thousand nine hundred
173 seventy-nine, by West Virginia residents who have not
174 attained the age of sixty-five, as compensation for active
175 service in the armed forces of the United States:
176 Provided, That such deduction shall be limited to an
amount not to exceed four thousand dollars: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(10) Gross income to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code for federal income tax purposes: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(11) The amount of any lottery prize awarded by the West Virginia state lottery commission, to the extent properly included in gross income for federal income tax purposes; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners. — The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen of this article.

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

*§11-21-51. Returns and liabilities.

1 (a) General. — On or before the fifteenth day of the fourth month following the close of a taxable year, an
income tax return under this article shall be made and
filed by or for:

(1) Every resident individual required to file a federal
income tax return for the taxable year, or having West
Virginia adjusted gross income for the taxable year,
determined under section twelve, in excess of the sum
of his West Virginia personal exemptions;

(2) Every resident estate or trust required to file a
federal income tax return for the taxable year, or
having any West Virginia taxable income for the
taxable year, determined under section eighteen;

(3) Every nonresident individual having any West
Virginia adjusted gross income for the taxable year,
determined under section thirty-two, in excess of the
sum of his West Virginia personal exemptions; and

(4) Every nonresident estate or trust having items of
income or gain derived from West Virginia sources,
determined in accordance with the applicable rules of
section thirty-two as in the case of a nonresident
individual, in excess of its West Virginia exemption.

(b) Husband and wife.

(1) If the federal income tax liability of husband or
wife is determined on a separate federal return, their
West Virginia income tax liabilities and returns shall
be separate.

(2) If the federal income tax liabilities of husband and
wife other than a husband and wife described in
subdivision (3) of this subsection (b) are determined on
a joint federal return, or if neither files a federal return:

(A) They shall file a joint West Virginia income tax
return, and their tax liabilities shall be joint and
several, or

(B) They may elect to file separate West Virginia
income tax returns on a single or separate form, as may
be required by the tax commissioner, if they comply
with the requirements of the tax commissioner in
setting forth information, and in such event their tax
liabilities shall be separate.
(3) If either husband or wife is a resident and the other is a nonresident, they shall file separate West Virginia income tax returns on such single or separate forms as may be required by the tax commissioner, and in such event their tax liabilities shall be separate.

(c) Decedents. — The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.

(d) Individuals under a disability. — The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(e) Estates and trusts. — The return for an estate or trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries. — If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) Tax a debt. — Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the state of West Virginia.

(h) Cross reference. — For provisions as to information returns by partnerships, employers and other persons, see section fifty-eight.

(i) Effective date. — This section, as amended by this act, shall apply to all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

§11-21-71. Requirement of withholding tax from wages.

(a) General. — Every employer maintaining an office or transacting business within this state and making payment of any wage taxable under this article to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax
computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion in the employee's West Virginia adjusted gross income of his wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by the tax commissioner, with due regard to the West Virginia withholding exemption of the employee. This section shall not apply to payments by the United States for service in the armed forces of the United States.

(b) Withholding exemptions. — For purposes of this section:

(1) An employee shall be entitled to the same number of West Virginia withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a higher number of West Virginia withholding exemptions.

(2) With respect to any taxable year prior to the first day of January, one thousand nine hundred eighty-three, the amount of each West Virginia exemption shall be six hundred dollars whether the individual is a resident or nonresident. With respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-three, and prior to the first day of January, one thousand nine hundred eighty-four, said exemption shall be seven hundred dollars and with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-four, and prior to the first day of January, one thousand nine hundred eighty-seven, said exemption shall be eight hundred dollars. With respect to any taxable year beginning after the thirty-first day of December, one thousand nine hundred eighty-six, said exemption shall be two thousand dollars.
UNEMPLOYMENT COMPENSATION [Ch. 143

(c) Exception for certain nonresidents. — If the income tax law of another state of the United States or of the District of Columbia results in its residents being allowed a credit under section forty sufficient to offset all taxes required by this article to be withheld from the wages of an employee, the tax commissioner may by regulation relieve the employers of such employees from the withholding requirements of this article with respect to such employees.

(d) Effective date. — The provisions of this section, as amended by this act, shall apply to all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

CHAPTER 143
(H. B. 2460—By Delegates Phillips and Murphy)
[Passed February 27, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to employment security; definitions; and exemption from the application of the chapter of all students who are employed and also enrolled at nonprofit or public educational institution.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


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

* Clerk's Note: This section was also amended by H. B. 2727, which passed subsequent to this act.
“Administration fund” means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

“Annual payroll” means the total amount of wages for employment paid by an employer during a twelve-month period ending with June thirty of any calendar year.

“Average annual payroll” means the average of the last three annual payrolls of an employer.

“Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual benefit year.

“Base period employer” means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

“Base period wages” means wages paid to an individual during the base period by all his base period employers.

“Benefit year” with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his last preceding benefit year. An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

“Benefits” means the money payable to an individual with respect to his unemployment.

“Board” means board of review.

“Calendar quarter” means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty or December thirty-one, or the
equivalent thereof as the commissioner may by regula-
tion prescribe.

“Commissioner” means the employment security
commissioner.

“Computation date” means June thirty of the year
immediately preceding the January one on which an
employer’s contribution rate becomes effective.

“Employing unit” means an individual, or type of
organization, including any partnership, association,
trust estate, joint-stock company, insurance company,
corporation (domestic or foreign), state or political
subdivision thereof, or their instrumentalities, as
provided in paragraph (b), subdivision (9) of the
definition of “employment” in this section, institution of
higher education, or the receiver, trustee in bankruptcy,
trustee or successor thereof, or the legal representative
of a deceased person, which has on January first, one
thousand nine hundred thirty-five, or subsequent
thereto, had in its employ one or more individuals
performing service within this state.

“Employer” means:

(1) Until January one, one thousand nine hundred
seventy-two, any employing unit which for some portion
of a day, not necessarily simultaneously, in each of
twenty different calendar weeks, which weeks need not
be consecutive, within either the current calendar year,
or the preceding calendar year, has had in employment
four or more individuals irrespective of whether the
same individuals were or were not employed on each of
such days;

(2) Any employing unit which is or becomes a liable
employer under any federal unemployment tax act;

(3) Any employing unit which has acquired or ac-
quires the organization, trade or business, or substan-
tially all the assets thereof, of an employing unit which
at the time of such acquisition was an employer subject
to this chapter;

(4) Any employing unit which, after December thirty-
one, one thousand nine hundred sixty-three, and until
January one, one thousand nine hundred seventy-two, in any one calendar quarter, in any calendar year, has in employment four or more individuals and has paid wages for employment in the total sum of five thousand dollars or more, or which, after such date, has paid wages for employment in any calendar year in the sum total of twenty thousand dollars or more;

(5) Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until January one, one thousand nine hundred seventy-two, in any three-week period, in any calendar year, has in employment ten or more individuals;

(6) For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

(7) Any employing unit which, after December thirty-one, one thousand nine hundred seventy-one, (i) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more, or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one individual (irrespective of whether the same individual was in employment in each such day) except as provided in subdivisions eleven and twelve hereof;

(8) Any employing unit for which service in employment, as defined in subdivision (9) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-one;

(9) Any employing unit for which service in employment, as defined in subdivision (10) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-one;

(10) Any employing unit for which service in employment, as defined in paragraphs (b) and (c) of subdivision
(9) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven;

(11) Any employing unit for which agricultural labor, as defined in subdivision (12) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven;

(12) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven.

"Employment," subject to the other provisions of this section, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, by an employee, as defined in section 3306(i) of the Federal Unemployment Tax Act, including service in interstate commerce;

(3) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, including service in interstate commerce, by any officer of a corporation;

(4) An individual's entire service, performed within or both within and without this state if: (a) The service is localized in this state or (b) the service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is
directed or controlled, is in this state; or (ii) the base of
operations or place from which such service is directed
or controlled is not in any state in which some part of
the service is performed but the individual's residence
is in this state;

(5) Service not covered under paragraph four of this
subdivision and performed entirely without this state
with respect to no part of which contributions are
required and paid under an unemployment compensa-
tion law of any other state or of the federal government,
shall be deemed to be employment subject to this
chapter if the individual performing such services is a
resident of this state and the commissioner approves the
election of the employing unit for whom such services
are performed that the entire service of such individual
shall be deemed to be employment subject to this
chapter;

(6) Service shall be deemed to be localized within a
state, if: (a) The service is performed entirely within
such state; or (b) the service is performed both within
and without such state, but the service performed
without such state is incidental to the individual's
service within this state, as, for example, is temporary
or transitory in nature or consists of isolated
transactions;

(7) Services performed by an individual for wages
shall be deemed to be employment subject to this
chapter unless and until it is shown to the satisfaction
of the commissioner that: (a) Such individual has been
and will continue to be free from control or direction
over the performance of such services, both under his
contract of service and in fact; and (b) such service is
either outside the usual course of the business for which
such service is performed or that such service is
performed outside of all the places of business of the
enterprise for which such service is performed; and (c)
such individual is customarily engaged in an independ-
ently established trade, occupation, profession or
business;

(8) All service performed by an officer or member of
the crew of an American vessel (as defined in section three hundred five of an act of Congress entitled Social Security Act Amendment of 1946, approved August tenth, one thousand nine hundred forty-six), on or in connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within and without the United States is ordinarily and regularly supervised, managed, directed and controlled, is within this state;

(9) (a) Service performed after December thirty-one, one thousand nine hundred seventy-one, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state: Provided, That such service is excluded from “employment” as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (7) of that act and is not excluded from “employment” under subdivision (11) of the exclusion from employment.

(b) Service performed after December thirty-one, one thousand nine hundred seventy-seven, in the employ of this state or any of its instrumentalities or political subdivisions thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any foregoing and one or more other states or political subdivisions: Provided, That such service is excluded from “employment” as defined in the Federal Unemployment Tax Act by section 3306 (c) (7) of that act and is not excluded from “employment” under subdivision (15) of the exclusion from employment in this section; and

(c) Service performed after December thirty-one, one thousand nine hundred seventy-seven, in the employ of a nonprofit educational institution which is not an institution of higher education;

(10) Service performed after December thirty-one, one thousand nine hundred seventy-one, by an individual in the employ of a religious, charitable, educational or
other organization but only if the following conditions are met:

(a) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c) (8) of that act; and

(b) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States after December thirty-one, one thousand nine hundred seventy-one (except in Canada and in the case of Virgin Islands after December thirty-one, one thousand nine hundred seventy-one, and before January one of the year following the year in which the secretary of labor approves for the first time an unemployment insurance law submitted to him by the Virgin Islands for approval) in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivision (4), (5) or (6) of this definition of "employment" or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but (i) the employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this subdivision (11) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has
filed a claim for benefits, based on such service, under
the law of this state.

An “American employer,” for purposes of this subdi-
vision (11), means a person who is (i) an individual who
is a resident of the United States; or (ii) a partnership
if two thirds or more of the partners are residents of
the United States; or (iii) a trust, if all of the trustees
are residents of the United States; or (iv) a corporation
organized under the laws of the United States or of any
state;

(12) Service performed after December thirty-one,
one thousand nine hundred seventy-seven, by an individ-
ual in agricultural labor as defined in subdivision
(5) of the exclusions from employment in this section
when:

(a) Such service is performed for a person who (i)
during any calendar quarter in either the current or the
preceding calendar year paid remuneration in cash of
twenty thousand dollars or more to individuals em-
ployed in agricultural labor (ii) for some portion of a day
in each of twenty different calendar weeks, whether or
not such weeks were consecutive, in either the current
or the preceding calendar year, employed in agricultu-
ral labor ten or more individuals, regardless of whether
they were employed at the same moment of time;

(b) Such service is not performed in agricultural
labor if performed before January one, one thousand
nine hundred eighty-six, by an individual who is an
alien admitted to the United States to perform service
in agricultural labor pursuant to sections 214 (c) and 101
(a) (15) (H) of the Immigration and Nationality Act;

(c) For the purposes of the definition of employment,
any individual who is a member of a crew furnished by
a crew leader to perform service in agricultural labor
for any other person shall be treated as an employee of
such crew leader (i) if such crew leader holds a valid
certificate of registration under the Farm Labor
Contractor Registration Act of 1968; or substantially all
the members of such crew operate or maintain tractors,
mechanized harvesting or crop-dusting equipment, or
any other mechanized equipment, which is provided by
such crew leader; and (ii) if such individual is not an
employee of such other person within the meaning of
subdivision (7) of the definition of employer;

(d) For the purposes of this subdivision (12), in the
case of any individual who is furnished by a crew leader
to perform service in agricultural labor for any other
person and who is not treated as an employee of such
crew leader under subparagraph (c) of this subdivision
(12), (i) such other person and not the crew leader shall
be treated as the employer of such individual; and (ii)
such other person shall be treated as having paid cash
remuneration to such individual in an amount equal to
the amount of cash remuneration paid to such individual
by the crew leader (either on his own behalf or on behalf
of such other person) for the service in agricultural
labor performed for such other person;

(e) For the purposes of this subdivision (12), the term
"crew leader" means an individual who (i) furnishes
individuals to perform service in agricultural labor for
any other person, (ii) pays (either on his own behalf or
on behalf of such other person) the individuals so
furnished by him for the service in agricultural labor
performed by them, and (iii) has not entered into a
written agreement with such other person under which
such individual is designated as an employee of such
other person;

(13) The term "employment" shall include domestic
service after December thirty-one, one thousand nine
hundred seventy-seven, in a private home, local college
club or local chapter of a college fraternity or sorority
performed for a person who paid cash remuneration of
one thousand dollars or more after December thirty-one,
one thousand nine hundred seventy-seven, in any
calendar quarter in the current calendar year or the
preceding calendar year to individuals employed in such
domestic service.

Notwithstanding the foregoing definition of "employ-
ment," if the services performed during one half or more
of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment.

The term "employment" shall not include:

(1) Service performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions, except as otherwise provided herein until December thirty-one, one thousand nine hundred seventy-seven;

(2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in paragraph (a), subdivision (9) of the definition of "employment," until December thirty-one, one thousand nine hundred seventy-seven;

(3) Service performed in the employ of the United States or any instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603(c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;
(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemploy-
ment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensa-
tion under an act of Congress, or who have, after acquiring potential rights to unemployment compensa-
tion under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after such publications which shall comply with the general rules of the department;

(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the definition of "employment" in this section. For purposes of this subdivision (5), the term "agricultural labor" includes all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or mainte-
nance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton,
or in connection with the operation or maintenance of
ditches, canals, reservoirs or waterways, not owned or
operated for profit, used exclusively for supplying and
storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in
handling, planting, drying, packing, packaging, process-
ing, freezing, grading, storing or delivering to storage
or to market or to a carrier for transportation to market,
in its unmanufactured state, any agricultural or
horticultural commodity; but only if such operator
produced more than one half of the commodity with
respect to which such service is performed; or (ii) in the
employ of a group of operators of farms (or a cooperative
organization of which such operators are members) in
the performance of service described in clause (i), but
only if such operators produced more than one half of
the commodity with respect to which such service is
performed; but the provisions of clauses (i) and (ii) shall
not be deemed to be applicable with respect to service
performed in connection with commercial canning or
commercial freezing or in connection with any agricul-
tural or horticultural commodity after its delivery to a
terminal market for distribution for consumption;

(e) On a farm operated for profit if such service is not
in the course of the employer's trade or business or is
domestic service in a private home of the employer. As
used in this subdivision (5), the term "farm" includes
stock, dairy, poultry, fruit, fur-bearing animals, truck
farms, plantations, ranches, greenhouses, ranges and
nurseries, or other similar land areas or structures used
primarily for the raising of any agricultural or horti-
cultural commodities;

(6) Domestic service in a private home except as
provided in subdivision (13) of the definition of "employ-
ment" in this section;

(7) Service performed by an individual in the employ
of his son, daughter or spouse;

(8) Service performed by a child under the age of
eighteen years in the employ of his father or mother;
(9) Service as an officer or member of a crew of an American vessel, performed on or in connection with such vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed and controlled, is without this state;

(10) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(11) Service performed (i) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) prior to January one, one thousand nine hundred seventy-eight, in the employ of a school which is not an institution of higher education; or (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) prior to January one, one thousand nine hundred seventy-eight, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution, and after December thirty-one, one thousand nine hundred
seventy-seven, by an inmate of a custodial or penal
institutions;

(12) Service performed in the employ of a school,
college or university, if such service is performed (i) by
a student who is enrolled and is regularly attending
classes at such school, college or university, or (ii) by the
spouse of such a student, if such spouse is advised, at
the time such spouse commences to perform such
service, that (I) the employment of such spouse to
perform such service is provided under a program to
provide financial assistance to such student by such
school, college or university, and (II) such employment
will not be covered by any program of unemployment
insurance;

(13) Service performed by an individual who is
enrolled at a nonprofit or public educational institution
which normally maintains a regular faculty and
curriculum and normally has a regularly organized
body of students in attendance at the place where its
educational activities are carried on as a student in a
full-time program, taken for credit at such institution,
which combines academic instruction with work expe-
rience, if such service is an integral part of such
program, and such institution has so certified to the
employer, except that this subdivision shall not apply to
service performed in a program established for or on
behalf of an employer or group of employers;

(14) Service performed in the employ of a hospital, if
such service is performed by a patient of the hospital,
as defined in this section;

(15) Service in the employ of a governmental entity
referred to in subdivision (9) of the definition of
“employment” in this section if such service is per-
formed by an individual in the exercise of duties (i) as
an elected official; (ii) as a member of a legislative body,
or a member of the judiciary, of a state or political
subdivision; (iii) as a member of the state national guard
or air national guard; (iv) as an employee serving on a
temporary basis in case of fire, storm, snow, earthquake,
flood or similar emergency; (v) in a position which,
under or pursuant to the laws of this state, is designated
as (I) a major nontenured policy-making or advisory
position, or (II) a policy-making or advisory position the
performance of the duties of which ordinarily does not
require more than eight hours per week.

Notwithstanding the foregoing exclusions from the
definition of "employment," services, except agricultural
labor and domestic service in a private home, shall be
deemed to be in employment if with respect to such
services a tax is required to be paid under any federal
law imposing a tax against which credit may be taken
for contributions required to be paid into a state
unemployment compensation fund, or which as a
condition for full tax credit against the tax imposed by
the Federal Unemployment Tax Act are required to be
covered under this chapter.

"Employment office" means a free employment office
or branch thereof, operated by this state, or any free
public employment office maintained as a part of a state
controlled system of public employment offices in any
other state.

"Fund" means the unemployment compensation fund
established by this chapter.

"Hospital" means an institution which has been
licensed, certified or approved by the state department
of health as a hospital.

"Institution of higher education" means an educational
institution which:

(1) Admits as regular students only individuals
having a certificate of graduation from a high school,
or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a
program of education beyond high school;

(3) Provides an educational program for which it
awards a bachelor's or higher degree, or provides a
program which is acceptable for full credit toward such
a degree, or provides a program of post-graduate or
post-doctoral studies, or provides a program of training
to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition all colleges and universities in this state are institutions of higher education for purposes of this section.

"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.

"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

"Total and partial unemployment" means:

(1) An individual shall be deemed totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.

(2) An individual who has not been separated from employment shall be deemed to be partially unemployed in any week in which due to lack of full-time work wages payable to him are less than his weekly benefit amount plus twenty-five dollars: Provided, That said individual must have earnings of at least twenty-six dollars.

"Wages" means all remuneration for personal service, including commissions and bonuses, and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service: Provided, That the term "wages" shall not include:

(1) That part of the remuneration which, after
remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand nine hundred thirty-eight, has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: *Provided,* That notwithstanding the foregoing provisions, on and after January one, one thousand nine hundred sixty-two, the term "wages" shall not include:

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a calendar year after one thousand nine hundred seventy-one; and shall not include that part of remuneration which, after remuneration equal to six thousand dollars is paid during a calendar year after one thousand nine hundred seventy-seven; and shall not include that part of remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year after one thousand nine hundred eighty, to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a
federal law imposing a tax against which credit may be
taken for contributions required to be paid into a state
unemployment fund. For the purposes of this subdivi-
sion (1), the term “employment” shall include service
constituting employment under any unemployment
compensation law of another state; or which as a
condition for full tax credit against the tax imposed by
the Federal Unemployment Tax Act is required to be
covered under this chapter; and, except, that for the
purposes of sections one, ten, eleven and thirteen, article
six of this chapter, all remuneration earned by an
individual in employment shall be credited to the
individual and included in his computation of base
period wages: *Provided*, That the remuneration paid to
an individual by an employer with respect to employ-
ment in another state or other states upon which
contributions were required of and paid by such
employer under an unemployment compensation law of
such other state or states shall be included as a part of
the remuneration equal to the amounts of three thou-
sand six hundred dollars or four thousand two hundred
dollars or six thousand dollars or eight thousand dollars
herein referred to. In applying such limitation on the
amount of remuneration that is taxable, an employer
shall be accorded the benefit of all or any portion of such
amount which may have been paid by its predecessor
or predecessors: *Provided, however*, That if the definition
of the term “wages” as contained in section 3306(b) of
the Internal Revenue Code of 1954 as amended: (a)
Effective prior to January one, one thousand nine
hundred sixty-two, to include remuneration in excess of
three thousand dollars, or (b) effective on or after
January one, one thousand nine hundred sixty-two, to
include remuneration in excess of three thousand six
hundred dollars, or (c) effective on or after January one,
one thousand nine hundred seventy-two, to include
remuneration in excess of four thousand two hundred
dollars, or (d) effective on or after January one, one
thousand nine hundred seventy-eight, to include remun-
eration in excess of six thousand dollars, or (e) effective
on or after January one, one thousand nine hundred
eighty, to include remuneration in excess of eight
thousand dollars, paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this article or his predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the Federal Unemployment Tax Act;

(2) The amount of any payment made after December thirty-one, one thousand nine hundred fifty-two (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual in its employ or any of his dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

(3) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his benefi-
753  beneficiary (A) from or to a trust described in section 401(a)
754  which is exempt from tax under section 501(a) of the
755  Federal Internal Revenue Code at the time of such
756  payments unless such payment is made to such individ-
757  ual as an employee of the trust as remuneration for
758  services rendered by such individual and not as a
759  beneficiary of the trust, or (B) under or to an annuity
760  plan which, at the time of such payment, is a plan
761  described in section 403(a) of the Federal Internal
762  Revenue Code;
763  (6) The payment by an employer of the tax imposed
764  upon an employer under section 3101 of the Federal
765  Internal Revenue Code with respect to remuneration
766  paid to an employee for domestic service in a private
767  home of the employer or agricultural labor;
768  (7) Remuneration paid by an employer after De-
769  cember thirty-one, one thousand nine hundred fifty-two,
770  in any medium other than cash to an individual in its
771  employ for service not in the course of the employer's
772  trade or business;
773  (8) Any payment (other than vacation or sick pay)
774  made by an employer after December thirty-one, one
775  thousand nine hundred fifty-two, to an individual in its
776  employ after the month in which he attains the age of
777  sixty-five, if he did not work for the employer in the
778  period for which such payment is made;
779  (9) Payments, not required under any contract of hire,
780  made to an individual with respect to his period of
781  training or service in the armed forces of the United
782  States by an employer by which such individual was
783  formerly employed;
784  (10) Vacation pay, severance pay or savings plans
785  received by an individual before or after becoming
786  totally or partially unemployed but earned prior to
787  becoming totally or partially unemployed: Provided,
788  That the term totally or partially unemployed shall not
789  be interpreted to include (1) employees who are on
790  vacation by reason of the request of the employees or
791  their duly authorized agent, for a vacation at a specific
792  time, and which request by the employees or their agent
is acceded to by their employer, (2) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation, or (3) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid by his employing unit, if accounted for and reported to such employing unit.

The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

“Week” means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the regulations prescribed by the commissioner.

“Weekly benefit rate” means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.

“Year” means a calendar year or the equivalent thereof, as determined by the commissioner.

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**CHAPTER 144**

(H. B. 2727—By Mr. Speaker, Mr. Chambers, and Delegate Swann, by request of the Executive)

[Passed March 14, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to amend and reenact sections ten-b and seventeen, article five; sections one and fifteen, article six; and section eleven, article seven of said chapter, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections ten-b and seventeen, article five of said chapter be amended and reenacted; that sections one and fifteen, article six; and section eleven, article seven of said chapter be amended and reenacted, all to read as follows:

Article
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
7. Claim Procedure.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


1 As used in this chapter, unless the context clearly requires otherwise:
3 "Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.
6 "Annual payroll" means the total amount of wages for employment paid by an employer during a twelve-month period ending with June thirty of any calendar year.
10 "Average annual payroll" means the average of the last three annual payrolls of an employer.
12 "Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual benefit year.

*Clerk's Note: This section was also amended by H. B. 2460, which passed prior to this act.
"Base period employer" means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

"Base period wages" means wages paid to an individual during the base period by all his base period employers.

"Benefit year" with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his last preceding benefit year; however, if a claim is effective on the first day of a quarter, the benefit year will be fifty-three weeks, in order to prevent an overlapping of the base period wages. An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

"Benefits" means the money payable to an individual with respect to his unemployment.

"Board" means board of review.

"Calendar quarter" means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty or December thirty-one, or the equivalent thereof as the commissioner may by regulation prescribe.

"Commissioner" means the employment security commissioner.

"Computation date" means June thirty of the year immediately preceding the January one on which an employer's contribution rate becomes effective.

"Employing unit" means an individual, or type of organization, including any partnership, association, trust estate, joint-stock company, insurance company,
corporation (domestic or foreign), state or political
subdivision thereof, or their instrumentalities, as
provided in paragraph (b), subdivision (9) of the
definition of "employment" in this section, institution of
higher education, or the receiver, trustee in bankruptcy,
trustee or successor thereof, or the legal representative
of a deceased person, which has on January first, one
thousand nine hundred thirty-five, or subsequent
thereof, had in its employ one or more individuals
performing service within this state.

"Employer" means:

(1) Until January one, one thousand nine hundred
seventy-two, any employing unit which for some portion
of a day, not necessarily simultaneously, in each of
twenty different calendar weeks, which weeks need not
be consecutive, within either the current calendar year,
or the preceding calendar year, has had in employment
four or more individuals irrespective of whether the
same individuals were or were not employed on each of
such days;

(2) Any employing unit which is or becomes a liable
employer under any federal unemployment tax act;

(3) Any employing unit which has acquired or ac-
quires the organization, trade or business, or substan-
tially all the assets thereof, of an employing unit which
at the time of such acquisition was an employer subject
to this chapter;

(4) Any employing unit which, after December thirty-
one, one thousand nine hundred sixty-three, and until
January one, one thousand nine hundred seventy-two, in
any one calendar quarter, in any calendar year, has in
employment four or more individuals and has paid
wages for employment in the total sum of five thousand
dollars or more, or which, after such date, has paid
wages for employment in any calendar year in the sum

total of twenty thousand dollars or more;

(5) Any employing unit which, after December thirty-
one, one thousand nine hundred sixty-three, and until
January one, one thousand nine hundred seventy-two, in
any three-week period, in any calendar year, has in
employment ten or more individuals;

(6) For the effective period of its election pursuant to
section three, article five of this chapter, any employing
unit which has elected to become subject to this chapter;

(7) Any employing unit which, after December thirty-
one, one thousand nine hundred seventy-one, (i) in any
calendar quarter in either the current or preceding
calendar year paid for service in employment wages of
one thousand five hundred dollars or more, or (ii) for
some portion of a day in each of twenty different
calendar weeks, whether or not such weeks were
consecutive, in either the current or the preceding
calendar year had in employment at least one individual
(irrespective of whether the same individual was in
employment in each such day) except as provided in
subdivisions eleven and twelve hereof;

(8) Any employing unit for which service in employ-
ment, as defined in subdivision (9) of the definition of
"employment" in this section, is performed after
December thirty-one, one thousand nine hundred
seventy-one;

(9) Any employing unit for which service in employ-
ment, as defined in subdivision (10) of the definition of
"employment" in this section, is performed after
December thirty-one, one thousand nine hundred
seventy-one;

(10) Any employing unit for which service in employ-
ment, as defined in paragraphs (b) and (c) of subdivision
(9) of the definition of "employment" in this section, is
performed after December thirty-one, one thousand nine
hundred seventy-seven;
(11) Any employing unit for which agricultural labor, as defined in subdivision (12) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven;

(12) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven.

"Employment," subject to the other provisions of this section, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, by an employee, as defined in section 3306(i) of the Federal Unemployment Tax Act, including service in interstate commerce;

(3) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, including service in interstate commerce, by any officer of a corporation;

(4) An individual's entire service, performed within or both within and without this state if: (a) The service is localized in this state or (b) the service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of
the service is performed but the individual's residence is in this state;

(5) Service not covered under paragraph four of this subdivision and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter;

(6) Service shall be deemed to be localized within a state, if: (a) The service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within this state, as, for example, is temporary or transitory in nature or consists of isolated transactions;

(7) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commissioner that: (a) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and (b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) such individual is customarily engaged in an independently established trade, occupation, profession or business;

(8) All service performed by an officer or member of the crew of an American vessel (as defined in section three hundred five of an act of Congress entitled Social Security Act Amendment of 1946, approved August
tenth, one thousand nine hundred forty-six), on or in
connection with such vessel, provided that the operating
office, from which the operations of such vessel operat-
ing on navigable waters within and without the United
States is ordinarily and regularly supervised, managed,
directed and controlled, is within this state;

(9) (a) Service performed after December thirty-one,
one thousand nine hundred seventy-one, by an individual
in the employ of this state or any of its instrumentalities
(or in the employ of this state and one or more other
states or their instrumentalities) for a hospital or
institution of higher education located in this state:
Provided, That such service is excluded from "employ-
ment" as defined in the Federal Unemployment Tax Act
solely by reason of section 3306 (c) (7) of that act and
is not excluded from "employment" under subdivision
(11) of the exclusion from employment.

(b) Service performed after December thirty-one, one
thousand nine hundred seventy-seven, in the employ of
this state or any of its instrumentalities or political
subdivisions thereof or any of its instrumentalities or
any instrumentality of more than one of the foregoing
or any instrumentality of any foregoing and one or more
other states or political subdivisions: Provided, That
such service is excluded from "employment" as defined
in the Federal Unemployment Tax Act by section 3306
(c) (7) of that act and is not excluded from "employment"
under subdivision (15) of the exclusion from employment
in this section; and

(c) Service performed after December thirty-one, one
thousand nine hundred seventy-seven, in the employ of
a nonprofit educational institution which is not an
institution of higher education;

(10) Service performed after December thirty-one,
one thousand nine hundred seventy-one, by an individual
in the employ of a religious, charitable, educational or
other organization but only if the following conditions
are met:

(a) The service is excluded from "employment" as
defined in the Federal Unemployment Tax Act solely by
reason of section 3306(c) (8) of that act; and

(b) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States after December thirty-one, one thousand nine hundred seventy-one, except in Canada and in the case of Virgin Islands after December thirty-one, one thousand nine hundred seventy-one, and before January one of the year following the year in which the secretary of labor approves for the first time an unemployment insurance law submitted to him by the Virgin Islands for approval in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivision (4), (5) or (6) of this definition of "employment" or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but (i) the employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this subdivision (11) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

An "American employer," for purposes of this subdivision (11), means a person who is (i) an individual who
is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed after December thirty-one, one thousand nine hundred seventy-seven, by an individual in agricultural labor as defined in subdivision (5) of the exclusions from employment in this section when:

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, including labor performed by an alien referred to in paragraph (b) of this subdivision (12); or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in paragraph (b) of this subdivision (12), ten or more individuals, regardless of whether they were employed at the same moment of time;

(b) Such service is not performed in agricultural labor if performed before January one, one thousand nine hundred eighty-eight by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a) (15) (H) of the Immigration and Nationality Act;

(c) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader (i) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by
such crew leader; and (ii) if such individual is not an employee of such other person within the meaning of subdivision (7) of the definition of employer;

(d) For the purposes of this subdivision (12), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subparagraph (c) of this subdivision (12), (i) such other person and not the crew leader shall be treated as the employer of such individual; and (ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person;

(e) For the purposes of this subdivision (12), the term “crew leader” means an individual who (i) furnishes individuals to perform service in agricultural labor for any other person, (ii) pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them, and (iii) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person;

(13) The term “employment” shall include domestic service after December thirty-one, one thousand nine hundred seventy-seven, in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars or more after December thirty-one, one thousand nine hundred seventy-seven, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

Notwithstanding the foregoing definition of “employment,” if the services performed during one half or more of any pay period by an employee for the person employing him constitute employment, all the services
of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment.

The term "employment" shall not include:

(1) Service performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions, except as otherwise provided herein until December thirty-one, one thousand nine hundred seventy-seven;

(2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in paragraph (a), subdivision (9) of the definition of "employment," until December thirty-one, one thousand nine hundred seventy-seven;

(3) Service performed in the employ of the United States or any instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603(c) of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;

(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unem-
402 employment compensation is payable under the Railroad
403 Unemployment Insurance Act and service with respect
404 to which unemployment benefits are payable under an
405 unemployment compensation system for maritime
406 employees established by an act of Congress. The
407 commissioner may enter into agreements with the
408 proper agency established under such an act of Congress
409 to provide reciprocal treatment to individuals who, after
410 acquiring potential rights to unemployment compensa-
411 tion under an act of Congress, or who have, after
412 acquiring potential rights to unemployment compensa-
413 tion under an act of Congress, acquired rights to benefit
414 under this chapter. Such agreement shall become
415 effective ten days after such publications which shall
416 comply with the general rules of the department;

417 (5) Service performed by an individual in agricultural
418 labor, except as provided in subdivision (12) of the
419 definition of “employment” in this section. For purposes
420 of this subdivision (5), the term “agricultural labor”
421 includes all services performed:

422 (a) On a farm, in the employ of any person, in
423 connection with cultivating the soil, or in connection
424 with raising or harvesting any agricultural or horticul-
425 tural commodity, including the raising, shearing,
426 feeding, caring for, training and management of
427 livestock, bees, poultry, and fur-bearing animals and
428 wildlife;

429 (b) In the employ of the owner or tenant or other
430 operator of a farm, in connection with the operation,
431 management, conservation, improvement or mainte-
432 nance of such farm and its tools and equipment, or in
433 salvaging timber or clearing land of brush and other
434 debris left by a hurricane, if the major part of such
435 service is performed on a farm;

436 (c) In connection with the production or harvesting of
437 any commodity defined as an agricultural commodity in
438 section fifteen (g) of the Agricultural Marketing Act, as
439 amended, or in connection with the ginning of cotton,
440 or in connection with the operation or maintenance of
441 ditches, canals, reservoirs or waterways, not owned or
operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in clause (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of clauses (i) and (ii) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision (5), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(6) Domestic service in a private home except as provided in subdivision (13) of the definition of "employment" in this section;

(7) Service performed by an individual in the employ of his son, daughter or spouse;
(8) Service performed by a child under the age of eighteen years in the employ of his father or mother;

(9) Service as an officer or member of a crew of an American vessel, performed on or in connection with such vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed and controlled, is without this state;

(10) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(11) Service performed (i) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) prior to January one, one thousand nine hundred seventy-eight, in the employ of a school which is not an institution of higher education; or (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) prior to January one, one thousand
nine hundred seventy-eight, for a hospital in a state
prison or other state correctional institution by an
inmate of the prison or correctional institution, and after
December thirty-one, one thousand nine hundred
seventy-seven, by an inmate of a custodial or penal
institution;

(12) Service performed in the employ of a school,
college or university, if such service is performed (i) by
a student who is enrolled and is regularly attending
classes at such school, college or university, or (ii) by the
spouse of such a student, if such spouse is advised, at
the time such spouse commences to perform such
service, that (I) the employment of such spouse to
perform such service is provided under a program to
provide financial assistance to such student by such
school, college or university, and (II) such employment
will not be covered by any program of unemployment
insurance;

(13) Service performed by an individual who is
enrolled at a nonprofit or public educational institution
which normally maintains a regular faculty and
curriculum and normally has a regularly organized
body of students in attendance at the place where its
educational activities are carried on as a student in a
full-time program, taken for credit at such institution,
which combines academic instruction with work expe-
rience, if such service is an integral part of such
program, and such institution has so certified to the
employer, except that this subdivision shall not apply to
service performed in a program established for or on
behalf of an employer or group of employers;

(14) Service performed in the employ of a hospital, if
such service is performed by a patient of the hospital,
as defined in this section;

(15) Service in the employ of a governmental entity
referred to in subdivision (9) of the definition of
“employment” in this section if such service is per-
formed by an individual in the exercise of duties (i) as
an elected official; (ii) as a member of a legislative body,
or a member of the judiciary, of a state or political
division; (iii) as a member of the state national guard
or air national guard; (iv) as an employee serving on a
temporary basis in case of fire, storm, snow, earthquake,
flood or similar emergency; (v) in a position which,
der under or pursuant to the laws of this state, is designated
as (I) a major nontenured policy-making or advisory
position, or (II) a policy-making or advisory position the
performance of the duties of which ordinarily does not
require more than eight hours per week.

Notwithstanding the foregoing exclusions from the
definition of “employment,” services, except agricultural
labor and domestic service in a private home, shall be
deemed to be in employment if with respect to such
services a tax is required to be paid under any federal
law imposing a tax against which credit may be taken
for contributions required to be paid into a state
unemployment compensation fund, or which as a
condition for full tax credit against the tax imposed by
the Federal Unemployment Tax Act are required to be
covered under this chapter.

“Employment office” means a free employment office
or branch thereof, operated by this state, or any free
public employment office maintained as a part of a state
controlled system of public employment offices in any
other state.

“Fund” means the unemployment compensation fund
established by this chapter.

“Hospital” means an institution which has been
licensed, certified or approved by the state department
of health as a hospital.

“Institution of higher education” means an educational
institution which:

(1) Admits as regular students only individuals
having a certificate of graduation from a high school,
or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a
program of education beyond high school;

(3) Provides an educational program for which it
awards a bachelor's or higher degree, or provides a
program which is acceptable for full credit toward such
a degree, or provides a program of post-graduate or
post-doctoral studies, or provides a program of training
to prepare students for gainful employment in a
recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of
this definition all colleges and universities in this state
are institutions of higher education for purposes of this
section.

"Payments" means the money required to be paid or
that may be voluntarily paid into the state unemploy-
ment compensation fund as provided in article five of
this chapter.

"Separated from employment" means, for the pur-
poses of this chapter, the total severance, whether by
quitting, discharge or otherwise, of the employer-
employee relationship.

"State" includes, in addition to the states of the United
States, Puerto Rico, District of Columbia and the Virgin
Islands.

"Total and partial unemployment" means:

(1) An individual shall be deemed totally unemployed
in any week in which such individual is separated from
employment for an employing unit and during which he
performs no services and with respect to which no wages
are payable to him.

(2) An individual who has not been separated from
employment shall be deemed to be partially unemployed
in any week in which due to lack of full-time work
wages payable to him are less than his weekly benefit
amount plus twenty-five dollars: Provided, That said
individual must have earnings of at least twenty-six
dollars.

"Wages" means all remuneration for personal service,
including commissions, gratuities customarily received
by an individual in the course of employment from
persons other than the employing unit, as long as such
gratuities equal or exceed an amount of not less than
twenty dollars each month and which are required to
be reported to the employer by the employee, bonuses
and the cash value of all remuneration in any medium
other than cash except for agricultural labor and
domestic service: Provided, That the term “wages” shall
not include:

(1) That part of the remuneration which, after
remuneration equal to three thousand dollars has been
paid to an individual by an employer with respect to
employment during any calendar year, is paid after
December thirty-one, one thousand nine hundred thirty-
nine, and prior to January one, one thousand nine
hundred forty-seven, to such individual by such em-
ployer with respect to employment during such calendar
year; or that part of the remuneration which, after
remuneration equal to three thousand dollars with
respect to employment after one thousand nine hundred
thirty-eight, has been paid to an individual by an
employer during any calendar year after one thousand
nine hundred forty-six, is paid to such individual by
such employer during such calendar year, except that
for the purposes of sections one, ten, eleven and thirteen,
article six of this chapter, all remuneration earned by
an individual in employment shall be credited to the
individual and included in his computation of base
period wages: Provided, That notwithstanding the
foregoing provisions, on and after January one, one
thousand nine hundred sixty-two, the term “wages” shall
not include:

That part of the remuneration which, after remunera-
tion equal to three thousand six hundred dollars has
been paid to an individual by an employer with respect
to employment during any calendar year, is paid during
any calendar year after one thousand nine hundred
sixty-one; and shall not include that part of remunera-
tion which, after remuneration equal to four thousand
two hundred dollars is paid during a calendar year after
one thousand nine hundred seventy-one; and shall not
include that part of remuneration which, after remun-
eration equal to six thousand dollars is paid during a calendar year after one thousand nine hundred seventy-seven; and shall not include that part of remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year after one thousand nine hundred eighty, to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision (1), the term "employment" shall include service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter; and, except, that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand six hundred dollars or four thousand two hundred dollars or six thousand dollars or eight thousand dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided, however, That if the definition of the term "wages" as contained in section 3306(b) of the Internal Revenue Code of 1954 as amended, is amended: (a) Effective prior to January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective
717 on or after January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand six hundred dollars, or (c) effective on or after January one, one thousand nine hundred seventy-two, to include remuneration in excess of four thousand two hundred dollars, or (d) effective on or after January one, one thousand nine hundred seventy-eight, to include remuneration in excess of six thousand dollars, or (e) effective on or after January one, one thousand nine hundred eighty, to include remuneration in excess of eight thousand dollars, paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this article or his predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the Federal Unemployment Tax Act;

736 (2) The amount of any payment made after December thirty-one, one thousand nine hundred fifty-two (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual in its employ or any of his dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (A) retirement, or (B) sickness or accident disability payments made to an employee under an approved state workers' compensation law, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

752 (3) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;
(4) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his beneficiary (A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) of the Federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the Federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under section 3101 of the Federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home of the employer or agricultural labor;

(7) Remuneration paid by an employer after December thirty-one, one thousand nine hundred fifty-two, in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer after December thirty-one, one thousand nine hundred fifty-two, to an individual in its employ after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed;
(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, That the term totally or partially unemployed shall not be interpreted to include (1) employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer, (2) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation, or (3) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid by his employing unit, if accounted for and reported to such employing unit.

The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

"Week" means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the regulations prescribed by the commissioner.

"Weekly benefit rate" means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.

"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

If a subject employer shall transfer his entire organization, trade or business, or substantially all the assets thereof, to another employer, the commissioner shall combine the contribution records and the benefit experience records of the transferring and acquiring employers. The acquiring employer's contribution rate for the remainder of the calendar year shall not be affected by the transfer but such rate shall apply to the whole of his business, including the portion acquired by the transfer, through the following December thirty-first.

If a subject employer shall make such transfer to an employing unit which is not an employer on the date of the transfer, such subject employer's rate shall continue as the rate of the acquiring employing unit until the next effective rate date. If an employing unit acquires simultaneously the entire organization, trade or business, or substantially all the assets thereof, of two or more covered employers, the successor shall be assigned as a contribution rate the then current rate of the transferring employer which had, in the calendar quarter immediately preceding the date of the transfer, the higher or highest payroll. If a subject employer shall transfer his entire organization, trade or business, or substantially all the assets thereof, to two or more employers or employing units, apportionment of the contribution records and benefit experience records of the transferring employer shall be made between the acquiring units in accordance with the ratio that the total assets acquired by each transferee bears to the total assets transferred by the transferring employer as of the date of the transfers. The current contribution rate of the transferring employer shall in such case continue as the rate of each transferee who or which is an employing unit until the next effective rate date; the current contribution rate of each transferee who or which is an employer shall continue as his or its rate until the next effective rate date. For the succeeding
calendar year the rate of each transferee shall be
determined as provided in section ten of this article. As
to any transfers which occur prior to July thirty-first of
the current calendar year such rate shall remain
effective for the balance of that calendar year: Provided,
however, That if the transfers occur subsequent to July
thirty-first such rate shall remain effective for the
balance of that calendar year and the rate for the
succeeding calendar year shall, notwithstanding any-
thing to the contrary provided in section seven of article
five of this chapter, be recomputed on the basis of the
combined experience of the transferring employers as of
July thirty-first of the year in which the transfers occur.
In case the transferring employer is delinquent in the
payment of contributions or interest thereon the
acquiring employer shall not be entitled to any benefit
of the contribution record of the transferring employer
unless payment of such delinquent contributions and
interest thereon is assumed by the acquiring employer.
The commissioner shall upon joint request of the
transferor and transferee furnish the transferee a
statement of the amount of any contribution and interest
due and unpaid by the transferor. A statement so
furnished shall be controlling for the purposes of the
foregoing proviso.

The provisions of this section shall not apply to any
employer which is established through the assistance of
any state economic development agency irrespective of
the contribution rate of any related predecessor.

§21A-5-17. Interest on past-due payments.

Payments unpaid on the date on which due and
payable, as prescribed by the commissioner, shall bear
interest at the rate of one percent per month until
payment plus accrued interest is received by the
commissioner. The commissioner may waive interest on
the payment of delinquent employers if payment is
made on all outstanding delinquent contributions which
were incurred on or before the first day of January, one
thousand nine hundred eighty-seven, during the period
beginning the first day of July, one thousand nine
hundred eighty-seven and ending on the thirty-first day of December, one thousand nine hundred eighty-seven.

Interest collected pursuant to this section shall be paid into the employment security special administration fund.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

§21A-6-1. Eligibility qualifications.

An unemployed individual shall be eligible to receive benefits only if the commissioner finds that:

1. He has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner;

2. He has made a claim for benefits in accordance with the provisions of article seven of this chapter and has furnished his social security number, or numbers if he has more than one such number;

3. He is able to work and is available for full-time work for which he is fitted by prior training or experience and is doing that which a reasonably prudent person in his circumstances would do in seeking work;

4. He has been totally or partially unemployed during his benefit year for a waiting period of one week prior to the week for which he claims benefits for total or partial unemployment; and

5. He has within his base period been paid wages for employment equal to not less than two thousand two hundred dollars and must have earned wages in more than one quarter of his base period.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

1. Benefits based on service in employment as defined in subdivisions (9) and (10) of the definition of
“employment” in section three, article one of this chapter, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services, in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

(2) Benefits based on service in employment defined in subdivisions (9) and (10) of the definition of “employment” in section three, article one of this chapter, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

(a) With respect to services in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual’s contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or after such holiday or vacation period.

(b) With respect to services in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week
which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this subsection and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause.

(c) With respect to services described in subdivisions (a) and (b) of this section, benefits shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(d) On and after April one, one thousand nine hundred eighty-four, benefits payable on the basis of services in any such capacities as specified in subdivisions (a) and (b) of this section shall be denied as specified in subdivisions (a), (b) and (c) of this section to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subdivision the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

ARTICLE 7. CLAIM PROCEDURE.


1 Benefits found payable by decision of a deputy, appeal
tribunal, the board or court shall be immediately paid
in accordance therewith up to the week in which a
subsequent appellate body renders a decision, by order,
finding that benefits were not or are not payable. If, at
any appeal stage, benefits are found to be payable which
were found before such appeal stage to be not payable,
the commissioner shall immediately reinstate the
payment benefits. 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 shall recover such amount by civil
action or in any manner provided in this code for the
collection of past-due payment and shall withhold, in
whole or in part, as determined by the commissioner,
any future benefits payable to the individual and credit
such amount against the overpayment until it is repaid
in full. If the final decision in any case determines that
the claimant was not lawfully entitled to the benefits
paid to him pursuant to a prior order, any benefits so
paid pursuant to such prior order, shall not be charge-
able to the employer's account.

(a) Whenever the commissioner finds that a dis-
charged employee has received back pay at his custom-
ary wage rate from his employer after reinstatement,
such employee shall be liable to repay the benefits, if
any, paid to such individual during the time he was
unemployed. In any case in which, under this section,
an employee is liable to repay benefits to the commis-
sioner, such sum shall be collectible by civil action in
the name of the commissioner.

(b) Whenever an employer subject to this chapter is
required to make a payment of back pay to an individual
who has received unemployment compensation benefits
during the same period covered by the back pay award,
the employer shall withhold an amount equal to the
unemployment compensation benefits and shall repay
the amount withheld to the unemployment compensation
trust fund. If an employer fails to comply with this
section, the commissioner shall have the right to recover
from the employer the amount of unemployment
compensation benefits which should have been withheld by a civil action.

CHAPTER 145
(S. B. 750—Originating in the Senate Committee on Finance)

[Passed March 14, 1987; is effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; and to further amend said chapter twenty-one-a by adding thereto a new article, designated article eight-a, relating to unemployment compensation debt generally; providing for an optional assessment on employees and employers to prevent a deficit upon the payment of benefits; authorizing the commissioner of the department of employment security to borrow money on behalf of the department of employment security to finance the repayment of funds advanced to the department of employment security by the federal government under the provisions of Section 1201 of the Social Security Act, 42 U.S.C.A. §1321; empowering the commissioner to borrow such money from the consolidated fund and the consolidated pension fund established under the provisions of section eight, article six, chapter twelve of this code, or from any private financial institution, or both; empowering the commissioner to borrow such money and issue revenue bonds as evidence of such borrowing; creating in the state treasury a special nonrevolving fund to be known as “the employment security debt note fund”; creating in the state treasury a special nonrevolving fund to be known as “the employment security debt bond fund”; describing the portion of assessments payable to such funds; authorizing the commissioner to pledge revenues of the special revenue funds to meet the requirements of a sinking fund; authorizing, by resolution of the commissioner, the issuance of bonds or notes; providing
for trust agreements for holders of bonds or notes; providing for payments from the special revenue funds to the municipal bond commission; prohibiting the commissioner from pledging the credit or taxing power of the state; exempting bonds or notes issued by the commissioner from certain taxes; providing for assessments on the gross wages of employees and an assessment on employers, and dedicating such assessments to the special revenue funds; authorizing the commissioner to adjust such assessments within certain limitations; establishing the West Virginia state board of investments as ex officio a board of investments for funds of the consolidated fund and the consolidated pension fund as they are made available for loans to the department of employment security; authorizing the board of investments to invest moneys, securities, and other assets of the consolidated fund in the form of interest-bearing loans to the department of employment security to finance the repayment of funds advanced to the department of employment security by the federal government under the provisions of Section 1201 of the Social Security Act, 42 U.S.C.A. §1321; setting forth the requirements for such loan; limiting the authority of the board of investments to make loans in an aggregate principal amount not to exceed two hundred sixty million dollars; requiring the board of investments to submit to the Legislature annually a full report of its activities so long as any loan is outstanding; and providing for the termination of the authority of the board of investments to make loans.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-one-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 ten-a; and to further amend said chapter by adding thereto a new article, designated article eight-a, all to read as follows:
Article
5. Employer Coverage and Responsibility.
8A. Employment Security Debt Funds.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10a. Optional assessments on employers and employees.

(a) On and after the first day of July, one thousand nine hundred eighty-seven, if the commissioner determines for a given projected quarter that the rates established under the provisions of section ten of this article will not result in payments being made to the unemployment compensation fund in an amount sufficient to finance the payment of benefits during such quarter, the commissioner shall certify such fact to the governor, and the governor shall, by executive order, direct the commissioner to establish a level of assessment for employees and employers in accordance with the provisions of this section which is sufficient to prevent, to the extent possible, a deficit in the funds available to pay benefits to eligible individuals.

(b) Pursuant to such executive order, every employer, contributing and reimbursable, subject to this chapter, shall be required to withhold from all persons in his employment an assessment which shall be in an amount not to exceed fifteen one hundredths (15/100) of one percent of an employee’s gross wages, which amount, together with an assessment contributed by the employer in an amount as determined in accordance with the provisions of subsection (c) of this section, except for reimbursable employers who shall not be assessed, shall be paid to the department of employment security on a form prescribed by the commissioner, at the same time and under the same conditions as the quarterly contribution payments required under the provisions of section seven, article five, chapter twenty-one-a of this code. The commissioner shall have the right to collect any delinquent assessments under this section in the same manner as provided for in section sixteen, article five, chapter twenty-one-a of this code; and in addition, any delinquency hereunder shall bear interest as set
forth in section seventeen, article five, chapter twenty-one-a of this code.

(c) The commissioner shall establish the exact amounts of the employers' and employees' assessments at a level sufficient to generate the revenues needed to prevent a deficit which would otherwise result from the payment of benefits to eligible individuals, subject only to the limitation established in the preceding subsection (b) of this section. After determining the level of assessment on the gross wages of employees, the commissioner shall determine a rate of assessment to be imposed upon employers, except reimbursable employers, which rate shall be expressed as a percentage of wages as defined in section three, article one of this chapter, and which is sufficient to cause the total statewide assessment on such employers to equal the total statewide assessment imposed upon employees.

ARTICLE 8A. EMPLOYMENT SECURITY DEBT FUNDS.

§21A-8A-1. Commissioner of department of employment security authorized to borrow money to repay funds advanced by the federal government; employment security debt fund established.

§21A-8A-2. Employment security debt note fund created; employment security debt bond fund created; pledge of funds for sinking fund.

§21A-8A-3. Issuance of revenue bonds or notes.

§21A-8A-4. Trust agreement for holders of bonds or notes.

§21A-8A-5. Municipal bond commission for payment of bonds or notes.

§21A-8A-6. Credit of state not pledged.


§21A-8A-8. Assessments; dedication of assessments; commissioner's authority to adjust assessments.

§21A-8A-9. West Virginia board of investments to act as board of investments for purposes of this article; powers.

§21A-8A-10. Authority of the board of investments.


§21A-8A-12. Limitations on loan authority.


§21A-8A-1. Commissioner of department of employment security authorized to borrow money to repay funds advanced by the federal government; employment security debt fund established.

(a) For the single purpose of financing the repayment
of funds advanced to the department of employment
security by the federal government under the provisions
of Section 1201 of the Social Security Act, 42 U.S.C.A.
§1321, for such advances which were made prior to the
first day of July, one thousand nine hundred eighty-
seven, the commissioner of the department of employ-
ment security is authorized on behalf of the department
of employment security, as provided in this article:

(1) To borrow money, as contractual indebtedness, not
bonded, and issue notes as evidence of such borrowing;
and

(2) To borrow money and issue revenue bonds as
evidence of such borrowing.

(b) Regardless of whether the repayment of funds
advanced by the federal government is to be accomp-
lished solely by issuing notes in accordance with the
provisions of subdivision (1), subsection (a) of this
section, solely by the issuance of bonds in accordance
with the provisions of subdivision (2) of such subsection,
or by a combination of such notes and bonds, the
commissioner shall provide for the issuance of such
notes or bonds in such principal amounts and upon such
terms as shall be necessary to provide sufficient money
for repaying, in whole, such funds advanced by the
federal government.

(c) The commissioner may borrow money as provided
for in subdivision (1), subsection (a) of this section, from
the consolidated fund and the consolidated pension fund
established under the provisions of section eight, article
six, chapter twelve of this code, or may borrow money
from any private financial institution or institutions, or
may borrow from both such funds and such institution
or institutions, or may borrow money as provided for in
subdivision (2), subsection (a) of this section, by issuing
revenue bonds. Prior to financing the repayment of
funds advanced by the federal government, the commis-
sioner shall ascertain which option or combination of
options presents the terms most economically favorable
to the commissioner and the employers and employees
of this state, and shall proceed to refinance the repay-
ment in accordance with such terms.

(d) The principal of and interest on such bonds and
notes shall be payable solely from the special nonrevolv-
ing funds created under the provisions of section two of
this article.

§21A-8A-2. Employment security debt note fund created;
employment security debt bond fund
created; pledge of funds for sinking fund.

(a) There is hereby created in the state treasury a
special nonrevolving revenue fund to be known as "the
employment security debt note fund," into which shall
be paid a portion of all funds derived from the assess-
ments hereinafter set forth in this article. The portion
of such assessments payable to the fund shall be an
amount directly proportional to the ratio which the
principal and interest on notes issued under this article
bears to the total amount of principal and interest to be
paid on indebtedness incurred under the provisions of
this article. This fund may also receive funds from any
other source, either state or federal.

(b) There is hereby created in the state treasury a
special nonrevolving revenue fund to be known as "the
employment security debt bond fund," into which shall
be paid a portion of all funds derived from the assess-
ments hereinafter set forth in this article. The portion
of such assessments payable to the fund shall be an
amount directly proportional to the ratio which the
principal and interest on bonds issued under this article
bears to the total amount of principal and interest to be
paid on indebtedness incurred under the provisions of
this article. This fund may also receive funds from any
other source, either state or federal.

(c) The commissioner shall have authority to pledge
all of the revenue paid into a fund created by this section
to meet the requirements of any sinking fund estab-
lished pursuant to section five of this article in connec-
tion with any revenue bond issue or notes authorized by
this article, including a reserve fund for the payment
of the principal of and interest on such revenue bond
§21A-8A-3. Issuance of revenue bonds or notes.

The issuance of bonds or notes under the provisions of this article shall be authorized by a resolution of the commissioner, which shall provide for the issuance of bonds or notes in an amount sufficient to provide moneys sufficient to repay the federal government for all advances and interest thereon made to the West Virginia department of employment security pursuant to Title 42 U.S.C.A. §1321, which such advances were made prior to the first day of July, one thousand nine hundred eighty-seven: Provided, That competitive sealed bids shall be used to determine the bond issuance agent. Such resolution shall prescribe the rights and duties of the bondholders or noteholders and the commissioner, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds or notes shall be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be payable at such times and intervals; be in such denominations, be in such form, either coupon or fully registered without coupons, or book entry, carrying such registration exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of such redemption prices, and be entitled to such priorities on the revenues paid into the special revenue fund as may be provided in the resolution authorizing the issuance of the bonds or notes or in any trust agreement made in connection therewith. The bonds or notes shall be signed by the governor and by the commissioner, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto, if any, shall
bear the facsimile signature of the commissioner. In case any of the officers whose signatures appear on the bonds or notes or coupons 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 such officers had remained in office until such delivery.

Such bonds or notes shall be sold in such manner as the commissioner may determine to be for the best interests of the state, taking into consideration the financial responsibility of the purchaser. The proceeds of such bonds or notes shall be used solely for the repayment of advances and interest under the provisions of Title 42 U.S.C.A. §1321.

The bonds or notes issued under the provisions of this article shall be and have all the qualities of negotiable instruments under the law merchant and the Uniform Commercial Code of this state.

Bonds or notes issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of the state of West Virginia and for business development corporations organized pursuant to article fourteen, chapter thirty-one of the code of West Virginia.

§21A-8A-4. Trust agreement for holders of bonds or notes.

The commissioner may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, either within or outside the state, as trustee for the holders of bonds or notes issued hereunder, setting forth therein such duties of the commissioner in respect to the payment of the bonds or notes, the conservation and application of all moneys, the security for moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds or notes, as may be agreed upon with the original purchasers of such bonds or notes, except that competitive bids shall be used to determine such trust company; and including therein provisions
restricting the individual right of action of bondholders
or noteholders as is customary in trust agreements
respecting bonds or notes and debentures of corpora-
tions, protecting and enforcing the rights and remedies
of the trustee and the bondholders or noteholders.

§21A-8A-5. Municipal bond commission for payment of
bonds or notes.

From the special revenue funds established in ac-
cordance with the provisions of section two of this article,
the commissioner shall make periodic payments to the
state municipal bond commission in an amount suffi-
cient to meet the requirements of any issue of bonds or
notes sold under the provisions of this article, as
specified in the resolution of the commissioner authoriz-
ing the issue and in any trust agreement entered into
in connection therewith. The payment so made shall be
placed by the commissioner in a special sinking fund
which is hereby pledged to and charged with the
payment of the principal of the bonds or notes of such
issue and the interest thereon, and to the redemption or
repurchase of such bonds or notes, such sinking fund to
be a fund for all bonds or notes of such issue without
distinction or priority of one over another. The moneys
in the special sinking fund, less such reserve for
payment of principal and interest as may be required
by the resolution of the commissioner authorizing the
issue and any trust agreement made in connection
therewith, may be used for the redemption of any of the
outstanding bonds or notes payable from such fund
which by their terms are then redeemable, or for the
purchase of bonds or notes at the market price; but not
exceeding the price, if any, at which such bonds or notes
shall in the same year be redeemable; and all bonds or
notes redeemed or purchased shall forthwith be can-
celed and shall not again be issued.

§21A-8A-6. Credit of state not pledged.

No provisions of this article shall be construed to
authorize the commissioner at any time or in any
manner to pledge the credit or taxing power of the state,
nor shall any of the obligations or debts created by the
commissioner under the authority herein granted be deemed to be obligations of the state.

The bonds and notes authorized hereby shall contain on their face a statement to the effect that: (1) Neither the state of West Virginia nor any agency, political corporation or political subdivision of the state of West Virginia is obligated to pay the principal of or interest on the bonds or notes except as provided in this article; and (2) neither the faith and credit nor the taxing power of the state of West Virginia or any agency, political corporation or political subdivision of the state of West Virginia is pledged to the payment of the principal of or interest on the bonds or notes except as provided by this article.


All bonds or notes issued by the commissioner under the provisions of this article and the income therefrom shall be exempt from taxation by the state of West Virginia, or by any county, school district or municipality thereof, except inheritance, estate and transfer taxes.

§21A-8A-8. Assessments; dedication of assessments; commissioner's authority to adjust assessments.

(a) On and after the first day of July, one thousand nine hundred eighty-seven, every employer, contributing and reimbursable, subject to this chapter, shall be required to withhold from all persons in his employment an assessment which shall be in an amount not to exceed thirty-five one-hundredths (35/100) of one percent of said employee's gross wages, which amount, together with an assessment contributed by the employer in an amount as determined in accordance with the provisions of subsection (b) of this section, except for reimbursable employers who shall not be assessed, shall be paid to the department of employment security on a form prescribed by the commissioner, at the same time and under the same conditions as the quarterly contribution payments required under the provisions of section seven, article five, chapter twenty-one-a of this code. The commissioner shall have the right to collect any
delinquent assessments under this section in the same
manner as provided for in section sixteen, article five,
chapter twenty-one-a of this code; and in addition, any
delinquency hereunder shall bear interest as set forth
in section seventeen, article five, chapter twenty-one-a
of this code.

(b) The commissioner shall establish the exact
amounts of the employers' and employees' assessments
at a level sufficient to generate the revenues needed to
retire the bonds or notes issued pursuant to this article
and to pay deferred interest owed to the federal
government when due, subject only to the limitation
established in the preceding subsection (a) of this
section. After determining the level of assessment on the
gross wages of employees, the commissioner shall
determine a rate of assessment to be imposed upon
employers, except reimbursable employers, which rate
shall be expressed as a percentage of wages, as defined
in section three, article one of this chapter, except that
for purposes of this section such wages shall include all
of that part of the remuneration paid to an employee
that is less than twenty-one thousand dollars during any
calendar year, and which is sufficient to cause the total
statewide assessment on such employers to equal the
total statewide assessment imposed upon employees.

(c) The proceeds derived from the assessments pro-
vided for in this section shall be placed in the special
nonrevolving revenue funds established pursuant to the
provisions of section two of this article to be held by the
commissioner separate and apart from all other funds
and accounts created under this chapter and the funds,
together with the interest derived therefrom, shall be
pledged and utilized only for the repayment of bonds or
notes issued under the provisions of this article and the
payment of deferred interest owed to the federal
government as the same becomes due. At such time as
there are no longer any bonds, notes or other evidences
of indebtedness outstanding which are payable from the
special nonrevolving revenue funds, any remaining
balance in these special accounts shall be paid into the
unemployment compensation trust fund. The commis-
sioner may establish additional special accounts and
subaccounts with the employment security administra-
tion fund for the purpose of identifying more precisely
the sources of payments into and disbursements from
the employment security administration fund.

(d) Prior to the beginning of any quarter during
which bonds or notes authorized by this article will be
outstanding, the commissioner may adjust the amount
of the assessment set forth in subsection (a) of this
section; however, the amount is never to exceed thirty-
five one-hundredths (35/100) of one percent of each said
employee’s gross wages. The assessment shall cease
when all the bonds or notes are repaid.

§21A-8A-9. West Virginia board of investments to act as
board of investments for purposes of this
article; powers.

The West Virginia state board of investments as
heretofore created and constituted under the provisions
of article six, chapter twelve of this code, shall be ex
officio a board of investments for funds of the special
investment funds designated as the consolidated fund
and the consolidated pension fund as they are made
available for investment in accordance with the provi-
sions of this article, and as such, the board of invest-
ments may exercise all of the powers and functions
granted to it pursuant to the provisions of said article
six of chapter twelve in carrying out the duties assigned
to it under the provisions of this article.

§21A-8A-10. Authority of the board of investments.

Upon application by the commissioner of the depart-
ment of employment security, the board of investments
shall invest moneys, securities, and other assets of the
consolidated fund and the consolidated pension fund
established under the provisions of section eight, article
six, chapter twelve of this code, in the form of interest-
bearing loans to the department of employment security
to finance the repayment of funds advanced to the
department of employment security by the federal
government under the provisions of Section 1201 of the
Social Security Act, 42 U.S.C.A. §1321. Such loan shall
be made, if at the time of the commitment to make the loan, the board of investments determines that there exists a plan for the repayment of such loan which is satisfactory to the board of investments and which can be carried out by the department of employment security, that the loan is needed to assist the department of employment security to repay advances made from the federal unemployment account in the unemployment trust fund in accordance with the provisions of Title 42 U.S.C.A. §1321. The board shall also determine that all of the proceeds of a loan made under the provisions of this article will be used to repay advances made to the department of employment security from the federal unemployment account in the unemployment trust fund in accordance with the provisions of Title 42 U.S.C.A. §1321, which advances were made prior to the first day of July, one thousand nine hundred eighty-seven. Any loss to the principal of the consolidated fund or the consolidated pension fund that occurs because of any loan authorized by this article shall be deducted only from the state government moneys in such funds.


(a) A loan made by the board of investments from the consolidated fund or the consolidated pension fund under the provisions of this article will bear interest at a rate determined by the board of investments not to exceed seven percent per annum. At the discretion of the board of investments, a loan made under the provisions of this article may be renewed if prevailing economic and financial conditions in the marketplace would permit such renewal to be prudently made: Provided, That any such renewal notes shall not be issued by the commissioner which would mature after the date on which the original notes would have otherwise matured.

(b) The date of maturity of notes issued by the commissioner shall, in all cases, be determined by the board of investments, consistent with its fiduciary responsibilities.

§21A-8A-12. Limitations on loan authority.

The authority of the board of investments to make
2 loans under the provisions of this article shall not at any
time exceed two hundred sixty million dollars in the
aggregate principal amount outstanding.


1 The board of investments shall submit to the Legis-
lature annually a full report of its activities under this
article so long as any loan made by the board under the
provisions of this article is outstanding.


1 The authority of the board of investments to make
2 loans under this article expires on the thirty-first day
3 of December, one thousand nine hundred eighty-seven.

CHAPTER 146

(Com. Sub. for H. B. 2892—By Delegate Southern)

[Passed March 13, 1987; in effect ninety days from passage. Approved by the Governor.]
§46-9-307. Protection of buyers of goods; protection of buyers of farm products; contents of notice of security interest.

(1) A buyer in ordinary course of business as defined in subsection nine, section two hundred one, article one of this chapter, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer know of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer, other than a buyer in ordinary course of business, takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than forty-five days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five day period.

(4) A secured party may enforce a security interest in farm products against a buyer in the ordinary course of business who purchases farm products from a person engaged in farming operations or against a commission merchant or selling agent who in the ordinary course of business sells farm products for a person engaged in farming operations, only where the secured party has signed and filed in the office of the secretary of state a form containing the following information:

(a) The name and address of the borrower;

(b) The borrower's signature;

(c) The name and address of the secured party;

(d) The social security number of the borrower, or in the case of a borrower doing business other than as an
individual, the borrower's internal revenue service
taxpayer identification number;

(e) A description of the farm products subject to the
security interest including the amount of such products
where applicable; and

(f) A reasonable description of the real estate, includ-
ing county, where or upon which the farm products are
located.

(5) The form described in subsection four of this
section must be amended in writing within three
months, and similarly signed and filed, to reflect
material changes. The effectiveness and continuation of
the form is to be treated as if it were a financing
statement.

(6) The provisions of section two hundred one, article
one of this chapter notwithstanding, as used in this
subsection and in subsections four and five of this
section or in subsections three, four, five and six of
section four hundred seven of this article, unless the
context in which used requires otherwise, the term:

(a) "Buyer in the ordinary course of business" means
a person who, in the ordinary course of business, buys
farm products from a person engaged in farming
operations who is in the business of selling farm
products;

(b) "Commission merchant" shall mean any person
engaged in the business of receiving any farm product
for sale, on commission, or for or on behalf of another
person;

(c) "Person" means any individual, partnership,
corporation, trust or any other business entity; and

(d) "Selling agent" means any person, other than a
commission merchant, who is engaged in the business
of negotiating the sale and purchase of any farm product
on behalf of a person engaged in farming operations.

§46-9-407. Information from filing officer; central index-
ing system for recording security interest in
farm products; contents.

(1) If the person filing any financing statement,
termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the secretary of state shall issue his certificate showing whether there is on file in his office on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be two dollars if the request for the certificate is in the standard form prescribed by the secretary of state and otherwise shall be five dollars plus fifty cents for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of fifty cents per page.

(3) The secretary of state shall develop and implement a central indexing system containing the information filed with his office pursuant to subsection four, section three hundred seven of this article. Under this system, the secretary shall record the date and time of filing and compile the information into a master list organized according to farm products. The list shall be organized within each farm product category in alphabetical order according to the last name of the borrower, or in the case of borrowers doing business other than as individuals, the first word in the name of such borrower in numerical order according to the social security or taxpayer identification number of the borrower, geographically by county and by crop year. The master list shall also contain the name and address of the secured party, the name and address of the borrower, a description of the farm products, including amount where applicable, subject to the security interest, and a reasonable description of the real estate, including the
county where or upon which the farm products are located.

(4) The secretary of state shall maintain a list of all buyers of farm products, commission merchants and selling agents who register with the secretary of state indicating an interest in receiving the lists described in subsection five of this section.

(5) The secretary of state shall distribute on a regular basis as determined by the secretary of state to each buyer, commission merchant and selling agent registered under subsection four, a copy in written or printed form of those portions of the master list which the buyer, commission merchant or selling agent has indicated an interest in receiving.

(6) Upon the request of any person, the secretary of state shall provide within twenty-four hours an oral confirmation of the filing of the form described in subsection four, section three hundred seven of this article, followed by a written confirmation.

AN ACT to amend and reenact section five, article one-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the commission on uniform state laws following a performance and fiscal audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

That section five, article one-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1A. COMMISSION ON UNIFORM STATE LAWS.

§29-1A-5. Reestablishment of commission.

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 commission on uniform state laws should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the commission on uniform state laws shall continue to exist until the first day of July, one thousand nine hundred ninety-three.

CHAPTER 148

(S. B. 215—By Senators Whitacre, Holliday, Spears, Tucker and Harman)

[Passed March 12, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-three and twenty-three-a, article two, chapter twenty 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 three-b, all relating to commercial whitewater rafting; clarifying and defining terms; prescribing the scope, amount and usage of licenses and licensing fees; term of service for certain members of the commercial whitewater advisory board; when board to meet; requiring a majority of the members to be present to conduct business; expanding the rule-making authority of the board with respect to rivers not designated as whitewater zones; limitations; removing certain outdated provisions and the sunsetting of the board; creating the whitewater responsibility act; declaring legislative purpose; definitions; setting forth duties of commercial whitewater outfitters and commercial whitewater guides; duties of participants; prohibiting certain activities of such participants; and setting forth
limitations on the liability of commercial whitewater outfitters and commercial whitewater guides.

Be it enacted by the Legislature of West Virginia:

That sections twenty-three and 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; and that said chapter be further amended by adding thereto a new article, designated article three-b, all to read as follows:

Article
2. Wildlife Resources.
3B. Whitewater Responsibility Act.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23. Outfitters and guides — Generally; definitions.

(a) Services of outfitters and guides for the benefit and convenience of hunters, fishermen and others in this state are recognized as essential, and such outfitters and guides may be licensed and authorized to serve as provided in this article. The director is hereby authorized to promulgate rules and regulations on services of outfitters and guides as herein authorized and defined.

(b) The term “outfitter,” as used herein, means and includes any person who, operating from any temporary or permanent camp, private or public lodge, or private or incorporated home situate within this state, provides for monetary profit or gain, saddle or pack animals or other animals, vehicles, boats, conveyances or equipment, or guide services for any person or persons hunting game animals, game birds, fishing or taking expeditions, both land and water, in this state. The term “outfitter” shall not include, however, any person who occasionally for accommodation or favor rather than profit or gain, rents equipment to hunters, fishermen or others as a service incidental to his principal occupation or business without advertising outfitter or guide services or holding out to the public the offering of such
services. The term "guide," as used herein, includes and embraces outfitter services and the term "outfitter" includes and embraces guide services, but the applicant for any license hereunder may in his or her application elect to be designated as an outfitter or guide.

(c) The term "commercial whitewater outfitter," as used herein, means any person, partnership, corporation or other organization, or any combination thereof, duly authorized and operating from within or from without the state, which for monetary profit or gain, provides whitewater expeditions or rents whitewater craft or equipment for use in whitewater expeditions on any river, portions of rivers or waters of the state in accordance with this article.

The term "commercial whitewater guide," as used herein, means any person who is an owner, agent or employee of a commercial whitewater outfitter, and who is qualified and authorized to provide services for whitewater expeditions in the state in accordance with this article.

§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 whitewater 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 portions 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 whitewater 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) In lieu of the annual license fee set forth in section twenty-six of this article, the annual license fee shall be five hundred dollars for each river on which a commercial whitewater outfitter operates. Such annual per river license fee shall be limited to the Cheat, Gauley, New, Shenandoah and Tygart Rivers. The annual license fee for a commercial whitewater outfitter operating on a river not so designated shall be five hundred dollars regardless of the number of rivers operated on. A commercial whitewater outfitter who is operating on an above designated river and who has paid the annual per river license fee may not be required to pay an additional annual license fee to operate on a nondesignated river. The commercial whitewater outfitter license shall be issued by the director and shall be for a period of ten years. Such license is subject to the bonding provisions set forth in section twenty-six of this article and the revocation provisions set forth in the rules and regulations promulgated by the commercial whitewater advisory board. 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, the promulgation of rules and regulations pursuant to this section, the enforcement of the provisions of this section and the reimbursement of expenses incurred by members of the commercial whitewater advisory board.

(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 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.

On the first day of July, one thousand nine hundred eighty-seven, the current commercial whitewater outfitter and consumer representatives on the board shall be appointed by the director to serve as follows: The region one representatives for a term of one year, the region two representatives for a term of two years
and the region three representatives for a term of three
years. Thereafter, as the respective terms of the
members expire, the director shall appoint commercial
whitewater outfitter and consumer representatives from
the respective regions, whose terms shall be three years
from the day on which their immediate predecessors'
terms expire. No commercial whitewater outfitter is
eligible for successive appointments to the board.

(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. However,
the board shall meet at least once every six months and
shall conduct business when a majority of the members
are present. 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.
The board shall also promulgate rules and regulations
to govern and apply to commercial whitewater outfitters
operating on rivers not designated as whitewater zones.
Such rules and regulations shall include, but not be
limited to, the following: (1) Minimum safety require-
ments for equipment; (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 commer-
cial whitewater guides. However, the board may not
limit the number of commercial whitewater outfitters
operating on rivers not designated as whitewater zones,
nor may the board limit the number of rafts or persons
transported in rafts by commercial whitewater outfitter
ners on rivers not designated as whitewater zones. Board
members shall be paid all reasonable and necessary
expenses incurred in the exercise of their duties.
(g) On rivers designated as whitewater zones, the board shall set the number of persons transported in rafts, pursuant to subdivision three, subsection (f) of this section, at not less than the total 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. The promulgation of such rules and regulations and any revision thereof shall be subject to the provisions of chapter twenty-nine-a of this code.

ARTICLE 3B. WHITEWATER RESPONSIBILITY ACT.

§20-3B-1. Legislative purposes.
§20-3B-2. Definitions.
§20-3B-3. Duties of commercial whitewater outfitters and commercial whitewater guides.
§20-3B-4. Duties of participants.
§20-3B-5. Liability of commercial whitewater outfitters and commercial whitewater guides.

§20-3B-1. Legislative purposes.

Every year, in rapidly increasing numbers, the inhabitants of the state of West Virginia and nonresidents are enjoying the recreational value of West Virginia rivers and streams. The tourist trade is of vital importance to the state of West Virginia and the services offered by commercial whitewater outfitters and commercial whitewater guides significantly contribute to the economy of the state of West Virginia. The Legislature recognizes that there are inherent risks in the recreational activities provided by commercial whitewater outfitters and commercial whitewater guides which should be understood by each participant. It is essentially impossible for commercial whitewater outfitters and commercial whitewater guides to eliminate these risks. It is the purpose of this article to define those areas of responsibility and affirmative acts for which commercial whitewater outfitters and commercial whitewater guides are liable for loss, damage or injury.
§20-3B-2. Definitions.

1 Unless the context of usage clearly requires otherwise:
2 (a) “Commercial whitewater outfitter” means any person, partnership, corporation or other organization, or any combination thereof, as defined in section twenty-three, article two of this chapter.
3 (b) “Commercial whitewater guide” means any person as defined in section twenty-three, article two of this chapter.
4 (c) “Participant” means any person using the services of a commercial whitewater outfitter or commercial whitewater guide on any river, portions of rivers or waters of the state.

§20-3B-3. Duties of commercial whitewater outfitters and commercial whitewater guides.

1 (a) All commercial whitewater outfitters and commercial whitewater guides offering professional services in this state shall provide facilities, equipment and services as advertised or as agreed to by the commercial whitewater outfitter, commercial whitewater guide and the participant. All services, facilities and equipment provided by commercial whitewater outfitters and commercial whitewater guides in this state shall conform to safety and other requirements set forth in article two of this chapter and in the rules promulgated by the commercial whitewater advisory board created by section twenty-three-a, article two of this chapter.
2 (b) In addition to the duties set forth in subsection (a) of this section, all commercial whitewater guides providing services for whitewater expeditions in this state shall, while providing such services, conform to the standard of care expected of members of their profession.

§20-3B-4. Duties of participants.

1 (a) Participants have a duty to act as would a reasonably prudent person when engaging in recreational activities offered by commercial whitewater
outfitters and commercial whitewater guides in this state.

(b) No participant may:

(1) Board upon or embark upon any commercial whitewater expedition when intoxicated or under the influence of nonintoxicating beer, intoxicating beverages or controlled substances; or

(2) Fail to advise the trip leader or the trip guide of any known health problems or medical disability and any prescribed medication that may be used in the treatment of such health problems during the course of the commercial whitewater expedition; or

(3) Engage in harmful conduct or willfully or negligently engage in any type of conduct which contributes to or causes injury to any person or personal property; or

(4) Perform any act which interferes with the safe running and operation of the expedition, including failure to use safety equipment provided by the commercial whitewater outfitter or failure to follow the instructions of the trip leader or trip guide in regard to the safety measures and conduct requested of the participants; or

(5) Fail to inform or notify the trip guide or trip leader of any incident or accident involving personal injury or illness experienced during the course of any commercial whitewater expedition. If such injury or illness occurs, the participant shall leave personal identification, including name and address, with the commercial whitewater outfitter’s agent or employee.

§20-3B-5. Liability of commercial whitewater outfitters and commercial whitewater guides.

It is recognized that some recreational activities conducted by commercial whitewater outfitters and commercial whitewater guides are hazardous to participants regardless of all feasible safety measures which can be taken.

(a) No licensed commercial whitewater outfitter or
commercial whitewater guide acting in the course of his employment is liable to a participant for damages or injuries to such participant unless such damage or injury was directly caused by failure of the commercial whitewater outfitter or commercial whitewater guide to comply with duties placed on him by article two of this chapter, by the rules of the commercial whitewater advisory board, or by the duties placed on such commercial whitewater outfitter or commercial whitewater guide by the provisions of this article.

(b) The limitations on liability created by this article apply only to commercial whitewater outfitters licensed under the provisions of article two of this chapter and to commercial whitewater guides who are agents or employees of licensed commercial whitewater outfitters, and only when the commercial whitewater outfitter or commercial whitewater guide is acting within the course of his employment.

CHAPTER 149
(Com. Sub. for H. B. 2448—By Delegates Roop and Overington)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]
criminal and civil penalties for violation of certain sections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-4. Manufacturers, possession or sale of intercepting device.
§62-1D-5. Forfeiture of device.
§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.
§62-1D-9. Lawful disclosure or use of contents of communication.
§62-1D-12. Civil liability; defense to civil or criminal action.
§62-1D-14. Breaking and entering, etc., to place or remove equipment.
§62-1D-15. Training and certification of law-enforcement officers employed in the interception of wire, oral or electronic communications which require a court order.


This act shall be known and may be cited as the “West Virginia Wiretapping and Electronic Surveillance Act.”


As used in this article, unless the context in which used clearly requires otherwise, the following terms have the meanings indicated:

(a) “Aggrieved person” means a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed.

(b) “Communications common carrier” means any telegraph company or telephone company and any radio common carrier.
(c) "Contents," when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication.

(d) "Electronic, mechanical or other device" means any device or apparatus (i) which can be used to intercept a wire, oral or electronic communication or (ii) the design of which render it primarily useful for the surreptitious interception of any such communication. There is excepted from this definition:

(1) Any telephone or telegraph instrument, equipment or facility or any component thereof: (a) Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or (b) being used by a communications common carrier in the ordinary course of its business or by an investigative or law-enforcement officer in the ordinary course of his duties; or

(2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal; or

(3) Any device used in a lawful consensual monitoring including, but not limited to, tape recorders, telephone induction coils, answering machines, body transmitters and pen registers.

(e) "Intercept" means the aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

(f) "Designated judge" means a circuit court judge designated by the chief justice of the West Virginia supreme court of appeals to hear and rule on applications for the interception of wire, oral or electronic communications.

(g) "Investigative or law-enforcement officer" means a member or members of the department of public
(h) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication.

(i) "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(j) "Person" means any person, individual, partnership, association, joint stock company, trust or corporation and includes any police officer, employee or agent of this state or of a political subdivision thereof.

(k) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

(l) "Electronic communication" means any transfer of
1 signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electro-magnetic, photoelectronic or photooptical system but does not include:

94 (1) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

97 (2) Any wire or oral communication;

98 (3) Any combination made through a tone-only paging device.

100 (m) “User” means any person or entity who or which uses an electronic communication service and is duly authorized by the provider of such service to engage in such use.

104 (n) “Electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.

108 (o) “Electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications.

112 (p) “Aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

113 (q) “Trap and trace device” means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.


1 (a) Except as otherwise specifically provided in this article, it is unlawful for any person to:

3 (1) Intentionally intercept, attempt to intercept or procure any other person to intercept or attempt to intercept, any wire, oral or electronic communication; or
(2) Intentionally disclose or intentionally attempt to disclose to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this article; and

(3) Intentionally use or disclose or intentionally attempt to use or disclose the contents of any wire, oral or electronic communication or the identity of any party thereto, knowing or having reason to know that such information was obtained through the interception of a wire, oral or electronic communication in violation of this article.

(b) Any person who violates subsection (a) of this section is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not more than five years or fined not more than ten thousand dollars or both fined and imprisoned.

(c) It is lawful under this article for an operator of a switchboard or an officer, employee, or provider of any wire or electronic communication service whose facilities are used in the transmission of a wire communication to intercept, disclose or use that communication or the identity of any party to that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the carrier of the communication. Providers of wire or electronic communication services may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(1) Notwithstanding any other law, any provider of wire or electronic communications services, or the directors, officers, employees, agents, landlords or custodians of any such provider, are authorized to provide information, facilities or technical assistance to persons authorized by this article to intercept wire, oral or electronic communication if such provider or its directors, officers, employees, agents, landlord or custodians has been provided with a duly certified copy
of a court order directing such assistance and setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities or assistance required. No cause of action shall lie in any court against any such provider of wire or electronic communication services, its directors, officers, agents, landlord or custodians for providing information facilities or assistance in accordance with the terms of any such order.

(2) It is lawful under this article for a person to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or the constitution or laws of this state.

§62-1D-4. Manufacture, possession or sale of intercepting device.

(a) Except as otherwise specifically provided in this article, any person who manufactures, assembles, possesses or sells any electronic, mechanical or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the illegal interception of wire, oral or electronic communications is guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not more than one year or fined not more than five thousand dollars or both so fined and imprisoned.

(b) It is lawful under this section for:

(1) A provider of wire or electronic communication services or an officer, agent, or employee of, or a person under contract with, any such provider, in the normal course of business of the provider to manufacture, assemble, possess or sell any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications;
(2) A person under contract with the United States, a state, a political subdivision of a state, or the District of Columbia, in the normal course of the activities of the United States, a state, a political subdivision thereof, or the District of Columbia, to manufacture, assemble, possess or sell any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications;

(3) An officer, agent or employee of the United States in the normal course of his or her lawful activities to manufacture, assemble, possess or sell any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications. However, any sale made under the authority of this subdivision may only be for the purpose of lawfully disposing of obsolete or surplus devices;

(4) An officer, agent or employee of a law-enforcement agency of this state or a political subdivision of this state in the normal course of his or her lawful activities to assemble or possess any electronic, mechanical or other device which is designed for or which is primarily useful for the purpose of the illegal interception of wire, oral or electronic communications, if the particular officer, agent or employee is specifically authorized by the chief administrator of the law-enforcement agency to assemble or possess the device for a particular law-enforcement purpose and the device is registered in accordance with this article.

§62-1D-5. Forfeiture of device.

1 Any electronic, mechanical or other device used, manufactured, assembled, possessed or sold in violation of either sections three or four of this article may be seized by and forfeited to the department of public safety.


1 Evidence obtained, directly or indirectly, by the
interception of any wire, oral or electronic communica-
tion shall be received in evidence only in grand jury
proceedings and criminal proceedings in magistrate
court and circuit court: Provided, That evidence
obtained in violation of the provisions of this article shall
not be admissible in any proceeding.


The chief justice of the supreme court of appeals shall,
on an annual basis, designate five active circuit court
judges to individually hear and rule upon applications
for orders authorizing the interception of wire, oral or
electronic communications: Provided, That no desig-
nated circuit judge may consider any application for
such an order if he or she presides as judge of the circuit
court of the county wherein the applied for installation
would occur or of the county wherein the communications facility, line or device to be monitored is located.

§62-1D-8. County prosecuting attorney or duly appointed
special prosecutor may apply for order
authorizing interception.

The prosecuting attorney of any county or duly
appointed special prosecutor may apply to one of the
designated circuit judges referred to in section seven of
this article and such judge, in accordance with the
provisions of this article, may grant an order authoriz-
ing the interception of wire, oral or electronic commun-
ications by an officer of the investigative or law-
enforcement agency when the prosecuting attorney or
special prosecutor has shown reasonable cause to believe
the interception would provide evidence of the commis-
sion of (i) kidnapping or abduction as defined and
prohibited by the provisions of sections fourteen and
fourteen-a, article two, chapter sixty-one of this code and
including threats to kidnap or demand ransom as
defined and prohibited by the provisions of section
fourteen-c of said article two, or (ii) of any offense
included and prohibited by section eleven, article four,
chapter twenty-five of said code, sections eight, nine and
ten, article five, chapter sixty-one of said code or section
one, article eight, chapter sixty-two of said code to the
extent that any of said sections provide for offenses punishable as a felony or (iii) dealing, transferring or trafficking in any controlled substance or substances in the felonious violation of chapter sixty-a of this code or (iv) any aider or abettor to any of the foregoing offenses or any conspiracy to commit any of the foregoing offenses if any aider, abettor or conspirator is a party to the communication to be intercepted.

§62-1D-9. Lawful disclosure or use of contents of communication.

(a) Any investigative or law-enforcement officer who has obtained knowledge of the contents of any wire, oral or electronic communication or evidence derived therefrom, may disclose the contents to another investigative or law-enforcement officer of any state or any political subdivision thereof, the United States or any territory, protectorate or possession of the United States, including the District of Columbia, only to the extent that the disclosure is required for the proper performance of the official duties of the officer making or receiving the disclosure, however, a record of such disclosure and the date, time, method of disclosure and the name of the person or persons to whom disclosure is made shall be forwarded, under seal, to the designated circuit judge who authorized such interception, who shall preserve said record for not less than ten years. In the event the designated judge shall leave office prior to the expiration of this ten-year period, he or she shall transfer possession of said record to another designated judge.

(b) Any investigative or law-enforcement officer who has obtained knowledge of the contents of any wire, oral or electronic communication or evidence derived therefrom or any investigative or a law-enforcement officer of any state or any political subdivision thereof, the United States or any territory, protectorate or possession of the United States, including the District of Columbia, who obtains such knowledge by lawful disclosure may use the contents to the extent that the use is appropriate to the proper performance of his or her official duties under the provisions of this article.
(c) Any person who has received any information concerning a wire, oral or electronic communication intercepted in accordance with the provisions of this article or evidence derived therefrom, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding held under the authority of this state or of any political subdivision of this state.

(d) An otherwise privileged wire, oral or electronic communication intercepted in accordance with, or in violation of, the provisions of this article does not lose its privileged character: Provided, That when an investigative or law-enforcement officer, while engaged in intercepting wire, oral or electronic communications in the manner authorized by this article, intercepts a wire, oral or electronic communication and it becomes apparent that the conversation is attorney-client in nature, the investigative or law-enforcement officer shall immediately terminate the monitoring of that conversation: Provided, however, That notwithstanding any provision of this article to the contrary, no device designed to intercept wire, oral or electronic communications shall be placed or installed in such a manner as to intercept wire, oral or electronic communications emanating from the place of employment of any attorney at law, licensed to practice law in this state.

(e) When an investigative or law-enforcement officer, while engaged in intercepting wire, oral or electronic communications in the manner authorized herein, intercepts wire, oral or electronic communications relating to offenses other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (a) and (b) of this section. Such contents and any evidence derived therefrom may be used under subsection (c) of this section when authorized or approved by the designated circuit judge where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this article. The application shall be made
as soon as may be practicable after such contents or the
evidence derived therefrom is obtained.

(f) Any law-enforcement officer of the United States,
who has lawfully received any information concerning
a wire, oral or electronic communication or evidence
lawfully derived therefrom, may disclose the contents of
that communication or the derivative evidence while
giving testimony under oath or affirmation in any
criminal proceeding held under the authority of this
state.

(g) Any information relating to criminal activities
other than those activities for which an order to
intercept communications may be granted pursuant to
section eight of this article may be disclosed only if such
relates to the commission of a felony under the laws of
this state, and such information may be offered, if
otherwise admissible, as evidence in any such criminal
proceeding, but shall not be used for the purpose of
obtaining an arrest warrant, or an indictment under
laws of this state.


(a) Except as provided in this section, no person may
install or use a pen register or a trap and trace device
without first obtaining permission to do so from the
designated judge by order granted in the same manner
as is required for an order granting permission to
intercept any wire, oral or electronic communication.

(b) The prohibition of subsection (a) does not apply
with respect to the use of a pen register or a trap and
trace device by a provider of electronic or wire
communication service:

(1) Relating to the operation, maintenance, and
testing of a wire or electronic communication service or
to the protection of the rights or property of such
provider, or to the protection of users of that service
from abuse of service or unlawful use of service; or

(2) To record the fact that a wire or electronic
communication was initiated or completed in order to
protect such provider or another provider furnishing
service toward the completion of the wire communica-
tion, or a user of that service, from fraudulent, unlawful
or abusive use of service; or

(3) With the consent of the user of that service.

c) The prosecuting attorney of any county or any duly
appointed special prosecutor may make application for
an order or an extension of an order under this section
authorizing or approving the installation and use of a
pen register or a trap and trace device in writing under
oath or affirmation, to the designated judge. Such
application shall be made in the same manner as set
forth in section ten of this article.

(d) Upon application made to the court as provided in
subsections (a) and (b) of this section, the designated
judge shall enter an ex parte order authorizing the
installation and use of a pen register or a trap and trace
device if the designated judge finds that the applicant
has certified to the court that the information likely to
be obtained by such installation and used is relevant to
an ongoing criminal investigation.

(e) An order issued under this section shall relate with
specificity (i) The identity of the person to whom the
telephone line to which the pen register or trap and
trace device is to be attached is leased or in whose name
such telephone is listed, (ii) the identity, if known, of the
person who is the subject of the criminal investigation,
(iii) the number and, if known, physical location of the
telephone line to which the pen register or trap and
trace device is to be attached and, in the case of a trap
and trace device, the geographic limits of the trap and
trace order, and (iv) a statement of the offense to which
the information likely to be obtained by the pen register
or trap and trace device relates. Such order shall also
direct, upon the request of the applicant, the furnishing
of information, facilities and technical assistance
necessary to accomplish the installation of the pen
register or trap and trace device.

(f) An order issued under this section shall authorize
the installation and use of a pen register or a trap and
trace device for a period not to exceed thirty days. One
extension of such thirty-day period may be granted by
order of the designated judge upon application if such judge makes the same findings as required by subsections (c) and (d) of this section.

(g) An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that (i) the order be sealed until otherwise ordered by the court; and (ii) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

(h) Upon the request of an officer of a law-enforcement agency authorized to install and use a pen register or a trap and trace device under this section, or an attorney acting in behalf of such agency or officer, a provider of wire or electronic communication service, landlord, custodian or other person shall furnish such investigative or law-enforcement officer forthwith all information, facilities and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order. Unless otherwise ordered by the designated judge, the results of the trap and trace device shall be furnished to the office of the law-enforcement agency, designated by the court, at reasonable intervals during regular business hours for the duration of the period during which the pen register or trap and trace device is installed as provided in such order.

(i) A provider of a wire or electronic communication service, landlord, custodian or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for services so rendered and shall be reimbursed for reasonable expenses incurred in providing such facilities and assistance.
(j) No cause of action shall lie against any provider of a wire or electronic communication service, its officers, agents or employees for providing information, facilities or assistance provided or rendered in accordance with the terms of any court order entered pursuant to this section.


(a) Each application for an order authorizing the interception of a wire, oral or electronic communication shall be made only to a designated judge by petition in writing upon oath or affirmation and shall state the applicant's authority to make the application. Each application shall set forth the following:

(1) The identity of the member of the department of public safety making the application, and of the officer authorizing the application, who shall be the superintendent of the department of public safety;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his or her belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which, or the place where, the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, and (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement showing that other investigative procedures have been tried and failed and why such procedures reasonably appear to be unlikely to succeed if again attempted or that to do so would be unreasonably dangerous and likely to result in death or injury or the destruction of property;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first
obtained, a particular description of facts establishing probable cause to believe additional communications of the same type will occur thereafter;

(5) A full and complete statement of the facts concerning all previous applications known to the person authorizing and making the application, for authorization to intercept wire, oral or electronic communications involving any of the same persons, facilities or places specified in the application and the action taken by the court with respect to each such application; and

(6) Where the application is for the extension of an order, a statement setting forth the results obtained pursuant to such order from the interception or a reasonable explanation of the failure to obtain any such results.

(b) The designated judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(c) Upon the application, the designated judge may enter an ex parte order, as requested or as modified or moulded, authorizing interception of wire, oral or electronic communications, if the judge determines on the basis of the evidence and argument presented by the applicant that:

(1) There is probable cause to believe that one or more individuals are committing, has committed, or are about to commit one or more of the particular offenses enumerated in section eight of this article;

(2) There is probable cause for belief that particular communications concerning such offense or offenses will be obtained through the interception;

(3) Normal investigative procedures have been tried and have failed and reasonably appear to be unlikely to succeed if attempted again, or that to do so would be unreasonably dangerous and likely to result in death or injury or the destruction of property; and

(4) There is probable cause to believe that the facilities from which, or the place where, the wire, oral
or electronic communications are to be intercepted are
being used, or are about to be used, in connection with
the commission of the offense, or offenses are leased to,
listed in the name of, or commonly used by this person.

(d) (1) Each order authorizing the interception of any
wire, oral or electronic communication shall specify: (i)
the identity of the person, if known, whose communica-
tions are to be intercepted, (ii) the nature and location
of the communications facilities as to which, or the place
where, authority to intercept is granted, (iii) a partic-
ular description of the type of communication sought to
be intercepted and a statement of the particular offense
to which it relates, (iv) the identity of members of the
department of public safety authorized to intercept the
communications and of the person authorizing the
applications and (v) the period of time during which the
interception is authorized, including a statement as to
whether or not the interception automatically termi-

(2) If an order authorizing the interception of a wire,
oral or electronic communication is issued, an additional
order may be issued upon petition of the applicant,
directing that a provider of wire or electronic commun-
ication service, landlord, custodian or other person
named in such order, furnish the applicant forthwith all
information, facilities and technical assistance necessary
to accomplish the interception unobtrusively and with a
minimum of interference with the services that the
carrier, landlord, custodian or person is according the
person whose communications are to be intercepted.
Such additional order shall set forth the period of time
authorized for providing the information, facilities or
technical assistance and shall specify the information,
facilities or technical assistance required. In no event
may a communications common carrier, its directors,
officers, employees and agents, landlords, custodians or
other persons be ordered to furnish, install or maintain
the electronic, mechanical or other device being used to
accomplish the authorized interception, to grant entry
into or upon its premises for the purposes of such
interception, or to otherwise provide assistance of any
nature other than information, facilities or technical
assistance. Any provider of wire or electronic commun-
ication service, landlord, custodian or other person
furnishing the facilities or technical assistance shall be
reasonably compensated therefor by the applicant for
such services and be reimbursed for the reasonable
expenses incurred in providing such facilities or
assistance.

(e) An order entered pursuant to this section may
authorize the interception of any wire, oral or electronic
communication for a period of time that is necessary to
achieve the objective of the authorization, not to exceed
twenty days. Such twenty-day period begins on the day
on which the investigative or law-enforcement officer
first begins to conduct an interception under the order
or ten days after the order is entered, whichever is
earliest. Extensions of an order may be granted, but
only upon application for an extension made as provided
in subsection (a) of this section and upon the court
making the findings required by subsection (c) of this
section. The period of extension may be no longer than
the designated judge deems necessary to achieve the
purposes for which it was granted and, in no event, for
longer than twenty days. Every order and extension
thereof shall contain a provision that the authorization
to intercept be executed as soon as practicable, be
conducted in such a way as to minimize the interception
of communications not otherwise subject to interception
under this article and terminate upon attainment of the
authorized objective, or in any event within the herein-
above described twenty-day period relating to initial
applications. In addition, every such order and extension
thereof shall contain a provision requiring termination
of the interception during any communication to which
none of the parties thereto is a person identified as
committing the offense in the statement of facts referred
to in subsection (a) and there is no reasonable suspicion
that any party to such communication is committing
such offense: Provided, That such provision shall permit
such interception up to the point of time that the person
authorized to intercept the communication knows or has reason to know the identities of the parties thereto.

(f) Whenever an order authorizing the interception of any wire, oral or electronic communication is entered pursuant to this article, the order shall require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at the intervals required by such order.

(g) The contents of any wire, oral or electronic communication intercepted by any means authorized by this article shall be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral or electronic communication under this subsection shall be done in such a way or ways as will protect the recording from editing or alterations thereto. Immediately upon the expiration of the period of time during which interception and recording is authorized by the order, or extensions thereof, such recordings shall be made available to the judge issuing such order. Custody of the recordings shall be with the superintendent of the department of public safety. Such recordings may not be destroyed except upon an order of the judge to whom application was made and in any event shall be retained for a period of ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (a) and (b), section nine of this article for investigations by law-enforcement agencies.

(h) Applications made and orders granted under this article shall be ordered sealed by the court and shall remain in his or her custody. The applications and orders may be disclosed only upon a showing of good cause and may not be destroyed except upon order of such designated judge and in any event shall be kept for not less than ten years. In the event the designated judge shall leave office prior to the expiration of this ten-year period, he or she shall transfer possession of said applications and orders to another designated judge.
(i) Any violation of the provisions of this section may be punished as for criminal contempt of court by the designated judge to whom application was made.

(j) Within sixty days of the termination of the ordered interception of wire, oral or electronic communications, the superintendent of the department of public safety shall provide the designated judge who issued said order a list containing the names and addresses of all persons whose communications were intercepted. Within a reasonable time, but not later than ninety days after the termination of the period specified in an order permitting the interception of any wire, oral or electronic communication or extensions thereof, the designated judge shall cause to be served upon the persons named in the order and such other parties to intercepted communications as the designated judge may determine in his or her discretion that the interest of justice requires written notice of the interception of communications. Such written notice shall include: (i) the fact of the entry of the order, (ii) the date of the entry and the period of authorized interception and (iii) the fact that during the period wire, oral or electronic communications were or were not intercepted: Provided, That the service of such notice shall be the sole responsibility of the superintendent of the department of public safety.

The designated judge shall, upon motion therefor, make available for inspection by such person or his or her counsel all of the intercepted communications, applications and orders pertaining to that person and the alleged offense for which the interception was requested and granted.

(k) The contents of any intercepted wire, oral or electronic communication or evidence derived therefrom may not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state unless each party, not less than twenty days before the trial, hearing or proceeding at which the communication or evidence is to be presented has been furnished with a copy of the written petition or application and order under which the interception was
authorized. Where no application or order is required under the provisions of this article, each party, not less than twenty days before any such trial, hearing or proceeding shall be furnished with information concerning when, where and how the interception took place and why no application or order was required.

(l) Any aggrieved person in any trial, hearing or proceeding in or before any court of this state may move to suppress the contents of any intercepted wire, oral or electronic communication or evidence derived therefrom on the grounds that (i) The communication was unlawfully intercepted; (ii) The order of authorization under which it was intercepted is insufficient on its face or was not obtained or not issued in strict compliance with this article; or (iii) The interception was not made in conformity with the order of authorization. Such motion may be made before or during the trial, hearing or proceeding. If the motion is granted, the contents of the intercepted wire, oral or electronic communication or evidence derived therefrom, shall not be admissible in evidence, in any such trial, hearing or proceeding. The designated judge, upon the filing of such motion shall make available to the movant thereof or to his or her counsel the intercepted communication or evidence derived therefrom for inspection.

§62-1D-12. Civil liability; defense to civil or criminal action.

(a) Any person whose wire, oral or electronic communication is intercepted, disclosed, used or whose identity is disclosed in violation of this article shall have a civil cause of action against any person who so intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use the communications, and shall be entitled to recover from any such person or persons:

(1) Actual damages, but not less than one hundred dollars for each day of violation;

(2) Punitive damages, if found to be proper; and

(3) Reasonable attorney fees and reasonable costs of litigation incurred.
14 (b) A good faith reliance by a provider of electronic
15 or wire communication services on a court order or
16 legislative authorization constitutes a complete defense
17 to any civil or criminal action brought under this article
18 or any other law.

§62-1D-13. Registration of intercepting devices; serial
1 number.

1 (a) Law-enforcement agencies in the state shall
2 register with the department of public safety all
3 electronic, mechanical or other devices whose design
4 renders them primarily useful for the purposes of the
5 surreptitious interception of wire, oral or electronic
6 communications which are owned by them or possessed
7 by or in the control of the agency, their employees or
8 agents. All such devices shall be registered within ten
9 days from the date on which the devices come into the
10 possession or control of the agency, its employees or
11 agents.

12 (b) Such registration shall include the name and
13 address of the agency as well as a detailed description
14 of each device registered, the serial number thereof and
15 such other information as the department may require.

16 (c) A registration number shall be issued for each
17 device registered pursuant to this section, which
18 number shall be permanently affixed or indicated upon
19 such device.

§62-1D-14. Breaking and entering, etc., to place or
1 remove equipment.

1 Any person who trespasses upon any premises with
2 the intent to place, adjust or remove wiretapping or
3 electronic surveillance or eavesdropping equipment
4 without an order from the designated judge authorizing
5 the same is guilty of a felony, and, upon conviction
6 thereof, shall be imprisoned in the penitentiary for not
7 more than five years.

§62-1D-15. Training and certification of law-enforce-
1 ment officers employed in the interception
2 of wire, oral or electronic communications
3 which require a court order.

1 The superintendent of the department of public safety
§2 shall establish a course of training in the legal and technical aspects of wiretapping and electronic surveillance, shall establish such regulations as he or she deems necessary and proper for such training program, and shall establish minimum standards for certification and periodic recertification of investigative or law-enforcement officers as eligible to conduct wiretapping or electronic surveillance as authorized by this article.


The various provisions of this article shall be construed as separable and severable, and should any of the provisions or parts thereof be construed or held unconstitutional or for any reason be invalid, the remaining provisions of this article shall not be thereby affected.

CHAPTER 150

(Com. Sub. for H. B. 2833—By Delegates Minard and Fullen)

[Passed March 14, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to provide a stable method of financing the operation of the Clarksburg-Harrison public library located in Harrison County, West Virginia, as the same was organized under the provisions of article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by creating a separate library board with power to operate such public library to serve the residents of the city of Clarksburg and the county of Harrison; requiring levy at request of boards; providing workers’ compensation coverage for library employees; vesting title to library property; and providing for application of future amendments to general law.

Be it enacted by the Legislature of West Virginia:

CLARKSBURG-HARRISON PUBLIC LIBRARY.

§1. Public library board created; joint support by the county board of education, county commission and city of Clarksburg.
§1. Public library board created; joint support by the county board of education, county commission and city of Clarksburg.

There is hereby created a public library board, which shall operate the Clarksburg-Harrison public library, which library shall be supported by the board of education of the county of Harrison, by the county commission of Harrison County, and by the city of Clarksburg, as a joint endeavor of the three governing authorities in the manner hereinafter provided.

§2. Board of directors; appointment, powers and duties generally; officers, bylaws, rules and regulations.

There shall be a board of directors consisting of five directors who shall serve without compensation. Before the first day of July, one thousand nine hundred eighty-seven, the board of education of the county of Harrison shall appoint two members of such board of directors, appointing one member for the term of one year and one member for the term of four years. The county commission of Harrison County shall appoint two members to the board of directors, appointing one member for the term of two years and one member for the term of five years. The city of Clarksburg shall appoint one member to the board of directors for the term of three years. The initial terms of these appointees shall commence on the first day of July, one thousand nine hundred eighty-seven. Annually thereafter, on or before the first day of July each year beginning on the first day of July, one thousand nine hundred eighty-eight, the three supporting entities shall in rotation, appoint one member of the board of directors annually, the first such appointment to be made by the city of Clarksburg, the second such appointment to be made by the board of education of Harrison County, and the third such appointment to be
made by the county commission of Harrison County. Each appointment to the board of directors of said library shall be for a term of five years, except that any person appointed to fill a vacancy occurring before the expiration of that term shall serve only for the unexpired portion thereof. Any member of the board shall be eligible for reappointment and the governing authority which appointed any member to the board may remove that member for cause.

There shall be an annual meeting of the board of directors on the third Tuesday in July of each year and a monthly meeting on the day of each month which the board may designate. A special meeting may be called by the president, the secretary, or any two members of the board and such special meeting shall be held only after all of the directors are given notice thereof in writing. At all meetings three members shall constitute a quorum and at each annual meeting of the board of directors it shall elect, from its membership, a president, a vice president, a secretary, and a treasurer: Provided, That the director of the library may be elected as the secretary. The board of directors shall adopt such bylaws, rules and regulations as are necessary for its own guidance and for the administration, supervision and protection of the library and all of the property belonging thereto. The board of directors shall have all of the powers necessary, convenient and advisable for the proper operation, equipment and management of said library; and except as otherwise especially provided in this act, shall have the powers and be subject to the duties which are conferred and imposed, respectively, upon library directors by sections six through eleven, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, or by subsequent enactments of the Legislature of West Virginia.

§3. A body corporate.

The public library hereby created shall be a corporation. As such it may contract and be contracted with, sue and be sued, plead and be impleaded, and shall have and use a common seal.
§4. Title to property.

The title to all property, both real and personal, now devoted to public library purposes by the board of education, the county of Harrison, and the city of Clarksburg in connection with the operation of it by a public library in the city of Clarksburg and the county of Harrison, and any branches of such library, shall, on the first day of July, one thousand nine hundred eighty-seven, vest in the board of directors of the Clarksburg-Harrison public library, hereby created.

§5. Levies for support, maintenance and operation.

In order to provide for the support, maintenance, and operations of the Clarksburg-Harrison public library and any branches thereof, the said supporting governing authorities shall, upon written request by the board of directors of the public library, levy annually within the respective taxing districts of the governing authorities, on each one hundred dollars of assessed valuation of the respective classes of property taxable in the area served by it according to the last assessment for state and county purposes, up to the following rates beginning with the fiscal year beginning on the first day of July, one thousand nine hundred eighty-seven:

(a) The county commission of Harrison County, for the first year and annually thereafter:

- Class I, two tenths cents;
- Class II, four tenths cents; and
- Class III and IV, eight tenths cents.

(b) The board of education of the county of Harrison for the first year and annually thereafter:

- Class I, two tenths cents;
- Class II, four tenths cents; and
- Class III and IV, eight tenths cents.

(c) The city of Clarksburg for the first year and annually thereafter:

- Class I, 1.066 cents;
Class II, 2.132 cents; and
Class III and IV, 4.264 cents.

Each year the board of directors shall request each of the three supporting authorities to levy within the rates prescribed above, at the rates specified by the board, on each one hundred dollars of assessed valuation of property of the same class; and each of the three supporting authorities shall levy at the rates requested by the aforesaid board. Nothing herein shall prevent any of the supporting authorities from contributing to the public library, from time to time, any other general or specific revenues or excess levies: Provided, That in the first year the mentioned levy rates are in effect, and in each year thereafter, the public library shall receive annual funding from the county commission of Harrison County in an amount not less than fifty thousand dollars, funding from the board of education of the county of Harrison in an amount not less than fifty thousand dollars, and funding from the city of Clarksburg in an amount not less than one hundred thousand dollars. Such minimum funding from the county commission and the county board of education shall be increased yearly by the amount of increase in revenues produced by the rates set out in this article, until the amounts contributed by the county commission and the county board of education equal the amount then contributed by the city of Clarksburg, and thereafter the three supporting authorities shall contribute to the public library in equal annual amounts of not less than one hundred thousand dollars.

§6. Deposit and disbursement of funds.

All money collected or appropriated by the three governing authorities for library purposes shall be deposited on a quarterly basis directed by the board of directors of the Clarksburg-Harrison public library in a bank or savings account specified by the board.

All moneys appropriated to the Clarksburg-Harrison public library and all income realized by the operation of the public library from any sources other than the above levies shall be used by the board of directors for
the support, maintenance and operation of the said
public library and its branches.

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 the library. Such accumulated surplus may be used if and as needed for support, maintenance and operation of the library, and for capital improvements, additions or extensions to library facilities.

§7. Status of employees.

All employees of the Clarksburg-Harrison public library shall be entitled to the benefits of the provisions of chapter twenty-three, and articles seven and ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§8. Effect of future amendments of general law.

Amendments to article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and other general laws shall control this act only to the extent that they do not conflict with the special features hereof, or unless the intent to amend this act is clear and unmistakable.

CHAPTER 151

(H. B. 3182—By Delegates Hale and Roop)

[Passed March 13, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing employees of the county commission of Mason County to make retroactive contributions to, and receive service credits from, the West Virginia public employees retirement system; county commission of Mason County empowered to participate with employees in making retroactive contributions to the West Virginia public employees retirement system according to law; participating employer and employees to have one year
Be it enacted by the Legislature of West Virginia:

MASSON COUNTY COMMISSION EMPLOYEES.

§1. Employees retroactive contributions authorized to, and service credits received from, the West Virginia public employees retirement fund.

Employees of the county commission of Mason County are authorized to make retroactive contributions to the West Virginia public employees retirement system and receive service credits therefor for the years prior to July, one thousand nine hundred seventy-three, in the manner provided by law.

§2. County commission of Mason County empowered to participate with employees in making retroactive contributions to the West Virginia public employees retirement system.

The county commission of Mason County is empowered to participate with employees in making retroactive contributions to the West Virginia public employees retirement system according to law.

§3. Participating employer and employees to have one year to make retroactive contributions for service credits.

The participating employer and employees herein shall have one year from the effective date hereof to make retroactive contributions for service credits.

§4. Liberal construction required.

Sections one through three herein shall be construed liberally to effectuate the purpose of establishing
entitlement of employees of the county commission of Mason County, West Virginia, to make retroactive payments to, and receive service credits from, the West Virginia public employees retirement system for years prior to July, one thousand nine hundred seventy-three.

CHAPTER 152
(Com. Sub. for S. B. 207—By Senators Whillow and Parker)
[Passed March 2, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred seventy-six, acts of the Legislature, regular session one thousand nine hundred eighty-six; and to amend and reenact section four, chapter one hundred seventy-six, acts of the Legislature, one thousand nine hundred eighty-five, all relating to the New River Parkway Authority; including Mercer County as a member of the authority with Raleigh and Summers Counties; powers and duties generally; officers; bylaws; rules and regulations; compensation; and support, maintenance and operation.

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, as last amended and reenacted by chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-six; and section four, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, be amended and reenacted, all to read as follows:

NEW RIVER PARKWAY AUTHORITY.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

§4. Support, maintenance and operation.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.
(a) The authority consists of nine voting members and four to six ex officio nonvoting members.

(b) Three voting members shall be appointed by the Mercer County Commission. 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, which said members shall not be elected to, appointed to or hold any other public office during their tenure as members of said authority. The regular term of a voting member shall be three years, provided that 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. Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All voting members are eligible for reappointment. Any voting member may be removed for cause by the appointing county commission.

(c) The 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, the district engineer of the Huntington District of the United States Army Corps of Engineers or his designee and the superintendent of the New River Gorge National River or his designee. Any designee serving as a nonvoting member may be removed at the will and pleasure of the officer designating the member.

(d) 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 three voting members of the authority and may be held only after all voting and nonvoting members are given
notice thereof in writing. Five voting 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 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 aspect of the New River Parkway upon or without request to any governmental entity or private person or entity. The authority shall not own or hold any real estate or real property and shall not operate or maintain the parkway.

(e) Each voting member of the authority may be compensated monthly by the county commission which appointed such member in an amount to be fixed by such county commission.

§4. Support, maintenance and operation.

The county commissions of Mercer, Raleigh and Summers Counties may provide for the support, maintenance and operation of the authority and other related activities under jurisdiction of the authority.

CHAPTER 153
(S. B. 759—By Senator Craigo)

[Passed April 7, 1987; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Putnam 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
ambulance services and equipment in Putnam County from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred eighty-seven.

Be it enacted by the Legislature of West Virginia:

PUTNAM COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED TO CONTINUE ADDITIONAL LEVY FOR AMBULANCE SERVICES AND EQUIPMENT

§1. Extending time for Putnam County commission to meet as levying body for election to continue additional levy for ambulance services and equipment.

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 Putnam County is hereby authorized to extend the time for its meeting as a levying 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-seven, for the purpose of submitting to the voters of Putnam County the extension of the additional county levy for ambulance services and equipment in Putnam County.

CHAPTER 154
(H. B. 2381—By Delegates Hutchinson and Roop)

[Passed February 23, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-two, as last amended and reenacted by chapter one hundred eighty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-four, relating to the Raleigh County Recreational Authority; members;
Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-two, as last amended and reenacted by chapter one hundred eighty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-four, be amended and reenacted to read as follows:

RALEIGH COUNTY RECREATION AUTHORITY.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

The authority shall consist of five or seven members at the discretion of the Raleigh County commission to be appointed by the Raleigh County commission. Such members shall be appointed and such authority shall commence operation on or before the first day of July, one thousand nine hundred eighty-four. If the authority consists of seven members, no more than four shall be from the same political party, and if the authority consists of five members then no more than three members shall be from the same political party. One member shall be appointed for a term of five years, one member for a term of four years, one member for a term of three years, one member for a term of two years and one member for a term of one year. The initial terms of office for new appointees shall commence on the first day of July, one thousand nine hundred eighty-four.

Each successor member shall be appointed for a term of five years, except that any person appointed to fill a vacancy occurring before the expiration of the term shall serve only for the unexpired portion thereof. Any member of the authority shall be eligible for reappointment and the county commission may remove any member for cause. There shall be an annual meeting of the authority on the second Monday in July in each year and a monthly meeting on the day in each month which the authority may designate in its bylaws. A special meeting may be called by the president, the secretary
or any two members of the authority and shall be held only after all of the members are given notice thereof in writing. At all meetings more than fifty percent of the members shall constitute a quorum and at each annual meeting of the authority it shall elect a president, a vice president, a secretary and a treasurer. The authority shall adopt such bylaws, rules and regulations as are necessary for its own guidance. The authority shall have all the powers necessary, convenient and advisable to effectuate the purposes of this act. In order to keep the peace within the boundaries of the recreational facilities under the authority’s supervision and control, the authority is specifically authorized to adopt as its own any rules or regulations promulgated by the West Virginia department of natural resources or the West Virginia department of commerce for the regulation of use of state parks, forests and hunting and fishing areas. Upon adoption of any such rules and regulations by the authority, the same shall have the authority of law and any magistrate within Raleigh County shall have jurisdiction of any violation thereof.

Each member of the authority shall be compensated monthly by the county in an amount to be fixed by the county commission.

Each member presently holding a position on the board of the Raleigh County recreational authority shall keep the same until his term shall normally expire.

CHAPTER 155
(H. B. 2533—By Delegate J. Martin)

[Passed March 12, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the county commission of Randolph County to transfer up to fifteen thousand dollars to the Randolph County Bicentennial Committee.

Be it enacted by the Legislature of West Virginia:
RANDOLPH COUNTY BICENTENNIAL COMMITTEE.

§1. Legislative findings.

§2. Authorization to donate funds.

§1. Legislative findings.

1 The Legislature hereby finds that the Randolph County Bicentennial Committee serves a very useful public purpose and provides that the citizens of Randolph County enjoy a much needed service concerning the duties of the Randolph County Bicentennial Committee and that such services are costly to provide. The Legislature also finds that the Randolph County Commission is dedicated to insuring that the Randolph County Bicentennial Committee is adequately funded.

§2. Authorization to donate funds.

1 The county commission of Randolph County, by commission action, is empowered to recognize the activities and service of the Randolph County Bicentennial Committee as a most worthy public purpose and the county commission is hereby authorized, empowered to donate, give and transfer to the Randolph County Bicentennial Committee fund a sum not to exceed fifteen thousand dollars for the purposes of carrying out its assigned powers and duties and to require the funds to be returned to the county commission should the funds not be properly allocated by the Bicentennial Committee, as may be determined by the Randolph County Commission.

CHAPTER 156
(H. B. 2994—By Delegates Burk and Rogers)

[Passed March 13, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to provide a stable method of financing the operation of the Parkersburg and Wood County public library and the Vienna public library, both located in Wood County, West Virginia, as the same were organized under the
provisions of article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by creating two separate library boards with power to operate such public libraries to serve the residents of the city of Parkersburg, the city of Vienna and the county of Wood; requiring levy at request of boards; providing workers' compensation coverage for library employees; vesting title to library property; and providing for application of future amendments to general law.

Be it enacted by the Legislature of West Virginia:

PARKERSBURG AND WOOD COUNTY PUBLIC LIBRARY.

§1. Public library board created; joint support by the county board of education, county commission and city of Parkersburg.

§2. Board of directors; appointment, powers and duties generally; officers, bylaws, rules and regulations.

§3. A body corporate.

§4. Title of property.

§5. Levies for support, maintenance and operation.

§6. Deposit and disbursement of funds.

§7. Status of employees.

§8. Public library board created; joint support by the county board of education, county commission and city of Vienna.

§9. Board of directors; appointments, powers and duties generally; officers, bylaws, rules and regulations.

§10. A body corporate.

§11. Title to property.

§12. Levies for support, maintenance and operation.

§13. Deposit and disbursement of funds.


§15. Effect of future amendments of general law.

§16. Severability.

§1. Public library board created; joint support by the county board of education, county commission and city of Parkersburg.

There is hereby created a public library board, which shall operate the Parkersburg and Wood County public library, which library shall be supported by the board of education of the county of Wood, by the county commission of Wood County, and by the city of Parkersburg, as a joint endeavor of the three governing authorities in the manner hereinafter provided.
§2. Board of directors; appointment, powers and duties generally; officers, bylaws, rules and regulations.

There shall be a board of directors consisting of five directors who shall serve without compensation. Before the first day of July, one thousand nine hundred eighty-seven, the board of education of the county of Wood shall appoint two members of such board of directors, appointing one member for the term of one year and one member for the term of four years. The county commission of Wood County shall appoint two members to the board of directors, appointing one member for the term of two years and one member for the term of five years. The city of Parkersburg shall appoint one member to the board of directors for the term of three years. The initial terms of these appointees shall commence on the first day of July, one thousand nine hundred eighty-seven. Annually thereafter, on or before the first day of July each year beginning on the first day of July, one thousand nine hundred eighty-eight, the three supporting entities shall in rotation, appoint one member of the board of directors annually, the first such appointment to be made by the city of Parkersburg, the second such appointment to be made by the board of education of Wood County, and the third such appointment to be made by the county commission of Wood County. Each appointment to the board of directors of said library shall be for a term of five years, except that any person appointed to fill a vacancy occurring before the expiration of that term shall serve only for the unexpired portion thereof. Any member of the board shall be eligible for reappointment and the governing authority which appointed any member to the board may remove that member for cause.

There shall be an annual meeting of the board of directors on the third Tuesday in July of each year and a monthly meeting on the day of each month which the board may designate. A special meeting may be called by the president, the secretary, or any two members of the board and such special meeting shall be held only after all of the directors are given notice thereof in writing. At all meetings three members shall constitute
a quorum and at each annual meeting of the board of
directors it shall elect, from its membership, a presi-
dent, a vice president, a secretary, and a treasurer:
Provided, That the director of the library may be elected
as the secretary. The board of directors shall adopt such
bylaws, rules and regulations as are necessary for its
own guidance and for the administration, supervision
and protection of the library and all of the property
belonging thereto. The board of directors shall have all
of the powers necessary, convenient and advisable for
the proper operation, equipment and management of
said library; and except as otherwise especially provided
in this act, shall have the powers and be subject to the
duties which are conferred and imposed, respectively,
upon library directors by sections six through eleven,
article one, chapter ten of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, or by
subsequent enactments of the Legislature of West
Virginia.

§3. A body corporate.

The public library hereby created shall be a corpora-
tion. As such it may contract and be contracted with,
sue and be sued, plead and be impleaded, and shall have
and use a common seal.

§4. Title to property.

The title to all property, both real and personal, now
devoted to public library purposes by the board of
education, the county of Wood, and the city of Parkers-
burg in connection with the operation of it by a public
library in the city of Parkersburg and the county of
Wood, and any branches of such library, shall, on the
first day of July, one thousand nine hundred eighty-
seven, vest in the board of directors of the Parkersburg
and Wood County public library, hereby created.

§5. Levies for support, maintenance and operation.

In order to provide for the support, maintenance, and
operations of the Parkersburg and Wood County public
library and any branches thereof, the said supporting
governing authorities shall, upon written request by the
board of directors of the public library, levy annually within the respective taxing districts of the governing authorities, on each one hundred dollars of assessed valuation of the respective classes of property taxable in the area served by it according to the last assessment for state and county purposes, up to the following amounts beginning with the fiscal year beginning on the first day of July, one thousand nine hundred eighty-seven:

(a) The county commission of Wood County, for the first year and annually thereafter not to exceed:

Class I, five hundredths cents;
Class II, seven hundredths cents; and
Class III and IV, one cent.

(b) The board of education of the county of Wood for the first year and annually thereafter not to exceed:

Class I, five hundredths cents;
Class II, nine hundredths cents; and
Class III and IV, one and seven hundredths cents.

(c) The city of Parkersburg for the first year and annually thereafter not to exceed:

Class I, nine hundredths cents;
Class II, one and nine hundredths cents; and
Class III and IV, two and nine hundredths cents.

Each year the board of directors shall request each of the three supporting authorities to levy within the rates prescribed above, at the rates specified by the board, on each one hundred dollars of assessed valuation of property of the same class; and each of the three supporting authorities shall levy at the rates requested by the aforesaid board. In addition, each supporting authority may contribute to the public library any other general or specific revenues or excess levies.

§6. Deposit and disbursement of funds.

All money collected or appropriated by the three
governing authorities for library purposes shall be deposited at least quarter annually as directed by the board of directors of the Parkersburg and Wood County public library in a bank or savings account specified by the board.

All moneys appropriated to the Parkersburg and Wood County public library and all income realized by the operation of the public library from any sources other than the above levies shall be used by the board of directors for the support, maintenance and operation of the said public library and its branches.

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 the library. Such accumulated surplus may be used if and as needed for support, maintenance and operation of the library, and for capital improvements, additions or extensions to library facilities.

§7. Status of employees.

All employees of the Parkersburg and Wood County public library shall be entitled to the benefits of the provisions of chapter twenty-three, and articles seven and ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

VIENNA PUBLIC LIBRARY.

§8. Public library board created; joint support by the county board of education, county commission and city of Vienna.

There is hereby created a public library board, which shall operate the Vienna public library, which library shall be supported by the board of education of the county of Wood, by the county commission of Wood County and by the city of Vienna, as a joint endeavor of the three governing authorities in the manner hereinafter provided.

§9. Board of directors; appointments, powers and duties generally; officers, bylaws, rules and regulations.

There shall be a board of directors consisting of five
directors who shall serve without compensation. Before the first day of July, one thousand nine hundred eighty-seven, the board of education of the county of Wood shall appoint one member of such board of directors for the term of three years. The county commission of Wood County shall appoint one member to the board of directors for the term of one year. The city of Vienna shall appoint three members to the board of directors, appointing one member for the term of two years, one member for the term of four years and one member for the term of five years. The initial terms of these appointees shall commence on the first day of July, one thousand nine hundred eighty-seven. Annually thereafter, on or before the first day of July each year beginning on the first day of July, one thousand nine hundred eighty-eight, the three supporting entities shall in rotation, appoint one member of the board of directors annually, the first such appointment to be made by the county commission of Wood County, the second such appointment to be made by the city of Vienna, the third such appointment to be made by the board of education of Wood County, the fourth and fifth such appointments to be made by the city of Vienna. Each appointment to the board of directors of said library shall be for a term of five years, except that any person appointed to fill a vacancy occurring before the expiration of that term shall serve only for the unexpired portion thereof. Any member of the board shall be eligible for reappointment and the governing authority which appointed any member to the board may remove that member for cause.

There shall be an annual meeting of the board of directors on the third Tuesday in July of each year and a monthly meeting on the day of each month which the board may designate. A special meeting may be called by the president, the secretary, or any two members of the board and such special meeting shall be held only after all of the directors are given notice thereof in writing. At all meetings three members shall constitute a quorum and at each annual meeting of the board of directors it shall elect, from its membership, a president, a vice president, a secretary and a treasurer:
Provided, That the director of the said library may be elected as the secretary. The board of directors shall adopt such bylaws, rules and regulations as are necessary for its own guidance and for the administration, supervision and protection of the library and all of the property belonging thereto. The board of directors shall have all of the powers necessary, convenient and advisable for the proper operation, equipment and management of said library; and except as otherwise especially provided in this act, shall have the powers and be subject to the duties which are conferred and imposed, respectively, upon library directors by sections six through eleven, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, or by subsequent enactments of the Legislature of West Virginia.

§10. A body corporate.

The public library hereby created shall be a corporation. As such it may contract and be contracted with, sue and be sued, plead and be impleaded, and shall have and use a common seal.

§11. Title to property.

The title to all property, both real and personal, now devoted to public library purposes by the city of Vienna in connection with the operation of it by a public library in the city of Vienna, shall, on the first day of July, one thousand nine hundred eighty-seven, vest in the board of directors of the Vienna public library, hereby created.

§12. Levies for support, maintenance and operation.

In order to provide for the support, maintenance and operations of the Vienna public library, the said supporting governing authorities shall, upon written request by the board of directors of the public library, levy annually within the respective taxing districts of the governing authorities, on each one hundred dollars of assessed valuation of the respective classes of property taxable in the area served by it according to the last assessment for state and county purposes, up to the following amounts beginning with the fiscal year
beginning on the first day of July, one thousand nine
hundred eighty-seven:

(a) The county commission of Wood County, for the
first year and annually thereafter not to exceed:
Class I, one hundredths cents;
Class II, two hundredths cents; and
Class III and IV, two hundredths cents.

(b) The board of education of the county of Wood for
the first year and annually thereafter not to exceed:
Class I, one hundredths cents;
Class II, two hundredths cents; and
Class III and IV, two hundredths cents.

(c) The city of Vienna for the first year and annually
thereafter not to exceed:
Class I, four hundredths cents;
Class II, six hundredths cents; and
Class III and IV, nine hundredths cents.

Each year the board of directors shall request each
of the three supporting authorities to levy within the
rates prescribed above, at the rates specified by the
board, on each one hundred dollars of assessed valuation
of property of the same class; and each of the three
supporting authorities shall levy at the rates requested
by the aforesaid board. In addition, each supporting
authority may contribute to the public library any other
general or specific revenues or excess levies.

§13. Deposit and disbursement of funds.

All money collected or appropriated by the three
governing authorities for library purposes shall be
deposited at least quarter annually as directed by the
board of directors of the Vienna public library in a bank
or savings account specified by the board.

All moneys appropriated to the Vienna public library
and all income realized by the operation of the public
library from any sources other than the above levies shall be used by the board of directors for the support, maintenance and operation of the said public library.

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 the library. Such accumulated surplus may be used if and as needed for support, maintenance and operation of the library, and for capital improvements, additions or extensions to library facilities.


All employees of the Vienna public library shall be entitled to the benefits of the provisions of chapter twenty-three, and articles seven and ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

GENERAL.

§15. Effect of future amendments of general law.

Amendments to article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and other general laws shall control this act only to the extent that they do not conflict with the special features hereof, or unless the intent to amend this act is clear and unmistakable.

§16. Severability.

If any provision hereof is held invalid, such invalidity shall not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.
RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 19

(By Delegate Leary, Mr. Speaker, Mr. Chambers, Delegates Houvouras, Williams, Murensky, Summers, Knight, Jordan, Hartman, Conley, Childers, Stemple, J. Martin and Givens)

[Adopted March 14, 1986]

Providing for the first and second sessions of the fourth West Virginia Silver Haired Legislature conducted by elected Delegates and Senators who are persons sixty years old or older to provide an opportunity for older West Virginians to learn about the legislative process.

WHEREAS, The members of the West Virginia Legislature have continually evidenced their concern for issues and programs affecting older West Virginians; and

WHEREAS, West Virginia's legislators seek input from the State's older citizens to aid them in making their legislative decisions; and

WHEREAS, It is appropriate for the citizens of the State to understand the legislative process of the state legislature; and

WHEREAS, The members of the previous Silver Haired Legislatures were very impressed with the knowledge they gained about the legislative process; and

WHEREAS, Over twenty states across the nation are conducting successful Silver Haired Legislature sessions, West Virginia being among the first; and

WHEREAS, West Virginia's Silver Haired Legislature is considered one of the finest senior legislatures in the country in terms of replication of the legislative process and the in-depth educational and training experiences it provides; and

WHEREAS, The West Virginia Commission on Aging wishes to again sponsor such a session; and

WHEREAS, A two-year authorization for the Silver Haired
Legislature would be desirous insofar as it would serve to make the Silver Haired Legislature sessions more realistic and would allow for longer range planning and development of this program; therefore, be it

Resolved by the Legislature of West Virginia:

That the first session of the 68th West Virginia Senate and the first session of the 68th West Virginia House of Delegates grant permission to the Silver Haired Legislature to utilize the Senate and House of Delegates Chambers and appropriate hearing and meeting rooms for a Silver Haired Legislature Session and related training activities during 1987 and during 1988; and, be it

Further Resolved, That the Office of the Clerk of the Senate and the Office of the Clerk of the House of Delegates assist the West Virginia Commission on Aging to effectuate the purposes of this resolution.

HOUSE CONCURRENT RESOLUTION 34
(By Mr. Speaker, Mr. Chambers, et al)
{Adopted March 5, 1987.}

Memorializing the President and the Congress to continue and increase support of the Appalachian Trail and the Appalachian Trail Conference, and urging and encouraging the Governor of the State of West Virginia to extend to the Appalachian Trail and the Appalachian Trail Conference all possible state assistance and support.

WHEREAS, The Appalachian Trail is, on the fifteenth day of August, nineteen hundred eighty-seven, celebrating the fiftieth anniversary of its completion as a foottrail extending 2,145 miles from Springer Mountain, Georgia, to Mt. Katahdin, Maine; and

WHEREAS, The Appalachian Trail was designated in 1968 as the first National Scenic Trail by the Congress of the United States; and

WHEREAS, Portions of the Appalachian Trail pass through the State of West Virginia in both Monroe County and
Jefferson County, and the route of that trail passes through Harpers Ferry, West Virginia; and

WHEREAS, The Appalachian Trail has been developed by, and is managed by, the Appalachian Trail Conference, whose headquarters is located in Harpers Ferry, West Virginia; and

WHEREAS, The Appalachian Trail Conference is governed by a volunteer Board of Managers and coordinates the work of thirty-one hiking and outing clubs throughout the eastern United States who maintain portions of the Appalachian Trail, including the Kanawha Trail Club and the West Virginia Scenic Trails Association, both West Virginia organizations; and

WHEREAS, The Appalachian Trail Conference maintains its headquarters in Harpers Ferry as a visitor center for thousands of visitors each year, publishes a series of guidebooks and maps for the Appalachian Trail, and responds to many thousands of requests for information from persons throughout West Virginia, the United States, and the entire world, thereby providing a valuable public service for this State and the Nation; and

WHEREAS, The Appalachian Trail Conference will ultimately be responsible for management of more than one hundred thousand acres of public land in the Appalachian Trail corridor through an agreement with the National Park Service, a unique example of private, nonprofit management of public lands on such a large scale; and

WHEREAS, The Appalachian Trail Conference is, as a nonprofit organization with great responsibility for development and management of the Appalachian Trail, deserving of support from both the federal and state governments; and

WHEREAS, The Appalachian Trail Conference is a valuable asset to the State of West Virginia both in its development and management of the Appalachian Trail as well as in its maintenance of its headquarters within West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That, on this, the fiftieth anniversary of the Appalachian Trail, the appreciation and congratulations of the Legislature are hereby extended to the Appalachian Trail Conference, its
Board of Managers, and the clubs and persons who have labored to develop, maintain and manage the Appalachian Trail during the past half century of that notable and public-spirited endeavor; and, be it

_Further Resolved_, That the President of the United States and the Congress of the United States are requested to continue support of the Appalachian Trail and the Appalachian Trail Conference; and, be it

_Further Resolved_, That the Governor of the State of West Virginia is hereby urged and encouraged to extend to the Appalachian Trail and the Appalachian Trail Conference assistance and support as might be possible through the agencies of the State of West Virginia; and, be it

_Further Resolved_, That copies of this resolution be transmitted to the President of the United States, the presiding officer of each House of Congress and the members thereof from the State of West Virginia, the Governor of West Virginia, and the Appalachian Trail Conference.

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**COMMITTEE SUBSTITUTE**

FOR

HOUSE JOINT RESOLUTION 29

(By Delegates Sattes amd Rogers)

[Adopted March 14, 1987.]

Proposing an amendment to the Constitution of the State of West Virginia, amending article ten thereof by adding thereto a new section, designated section one-d, relating to the support of the free school system throughout the State; imposing a uniform excess levy statewide of ad valorem taxes; providing for the rate of such excess levy; providing that such excess levy is to replace certain local excess levies for schools in the several districts of the State and to replace all such levies as each expires; providing for the expenditure of the proceeds of such levy by local school districts; continuing library support from certain excess levies; 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 a special election to be held on Saturday, the fifth day of March, in the year one thousand nine hundred eighty-eight, which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section one-d, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1d. Uniform School Funding Amendment.

Any other provision of this Constitution to the contrary notwithstanding, in addition to the aggregate of taxes authorized by section one of this article, and in lieu of excess levies for free schools authorized by sections one-b and ten, article X of this Constitution to the extent that such levies are at a rate less than or equal to that imposed by this section and upon the expiration of such levies in effect at a greater rate than that imposed by this section, there is hereby imposed a uniform levy on the several classes of property for the support of public schools beginning on the first day of July, one thousand nine hundred eighty-eight, in order to assist the State in meeting its obligation to provide a thorough and efficient system of free schools and equality of substantive educational opportunity for all its citizens. Notwithstanding the aggregate of taxes assessed in any one year by the different levying bodies, the rate of the uniform levy assessed each year upon the classes of property as defined by general law shall be in amounts as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Rate</th>
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<tbody>
<tr>
<td>I</td>
<td>20.66 cents</td>
</tr>
<tr>
<td>II</td>
<td>41.31 cents</td>
</tr>
<tr>
<td>III</td>
<td>82.62 cents</td>
</tr>
<tr>
<td>IV</td>
<td>82.62 cents</td>
</tr>
</tbody>
</table>

Such uniform levy shall replace any local excess levy for schools in effect on the first day of July, one thousand nine hundred eighty-eight, and any local excess levy approved prior to such date, to the extent that such local
levy is at a rate less than or equal to that imposed by this section, and shall replace each local excess levy in effect at a greater rate upon the expiration of such local levy, and is in lieu of the exercise of the power to lay such levies by the local school districts as heretofore provided.

The revenue from such uniform levy shall be retained by each county and shall first be used to provide funds to each local school district for which a levy has been replaced by this amendment, until such local levy would have expired, so that such local school district will continue to have the same funds available for the same purposes as provided under such local levy; and then for general current expenses or any other expenses associated with the operation of the public schools in each local school district on the basis of the relative needs of each of the local school districts as each shall determine.

At such time as each of the local levies that are at a greater rate than that imposed herein expire and are thereby replaced by the uniform levy, the revenue from the uniform levy shall be retained by the county and shall be used for general current expenses or any other expenses associated with the operation of the public schools of the local school district on the basis of the relative needs of each local school district as it shall determine: Provided, That as to any county board required to contribute to the support, maintenance or operation of public libraries from revenues from excess levies, which mandate and excess levy were in effect prior to the effective date of this section, shall continue to make available from the uniform levy such amounts as would be available from the local excess levy of the county board, without regard to the expiration date of the local excess levy, upon written request therefor by the board of directors of the public library of the county.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment No. 1” and designated as the
“Uniform School Funding Amendment” and the purpose of the proposed amendment is summarized as follows: "To impose a uniform excess levy for school purposes beginning on the first day of July, one thousand nine hundred eighty-eight; to thereby equalize excess levy rates among the various counties; and to provide funds to local school districts.”

HOUSE RESOLUTION 4
(By Delegate Murensky)
[Adopted January 14, 1987.]

Creating a Select Committee on Economic Policy.

Resolved by the House of Delegates:

That for the life of the 68th Legislature there is hereby created a Select Committee on Economic Policy of the House of Delegates, consisting of twelve members, said members to be appointed by the Speaker. Notwithstanding the provisions of any House rule to the contrary, this committee shall have jurisdiction of legislative proposals affecting or defining economic policy and economic development of the State as the Speaker may deem appropriate.

The rules of the House of Delegates governing Standing Committees shall govern the actions and proceedings of this committee insofar as applicable.

HOUSE RESOLUTION 9
(By Delegates Love, Bradley, Kelly and Givens)
[Adopted March 12, 1987.]

Requesting that the Weirton-Stebenville Bridge be hereafter named and referred to as the Veteran's Bridge.

WHEREAS, This State is proud of those who have served with honor in the armed forces of the United States; and

WHEREAS, There should be a suitable memorial to those military veterans of this State and other States; and
WHEREAS, There is presently under construction a bridge between Weirton, West Virginia, and Steubenville, Ohio, linking the States of West Virginia and Ohio; and

WHEREAS, The aforementioned structure will serve admirably as a memorial honoring veterans; therefore, be it

Resolved by the House of Delegates:

That the bridge presently being constructed from Weirton, West Virginia, to Steubenville, Ohio, be hereafter named and known as the Veteran's Bridge, as an honor and memorial to military veterans everywhere; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the Mayor and city council of Weirton, to the Commissioner of Highways, to the President of these United States, to the Congressional Delegation from this State, to the Governor of this State, and to the national headquarters of the Veterans of Foreign Wars and the American Legion.

HOUSE RESOLUTION 10
(By Mr. Speaker, Mr. Chambers, and Delegate Knight)
[Adopted January 29, 1987.]

Creating a Select Committee on Governmental Ethics.

Resolved by the House of Delegates:

That for the life of the 68th Legislature there is hereby created a Select Committee on Governmental Ethics of the House of Delegates, consisting of fifteen members, said members to be appointed by the Speaker. Notwithstanding the provisions of any House rule to the contrary, this committee shall have jurisdiction of legislative proposals affecting or defining governmental ethics and conflicts of interest for employers and officials of the State and its political subdivisions as the Speaker may deem appropriate.

The rules of the House of Delegates governing Standing Committees shall govern the actions and proceedings of this committee insofar as applicable.
SENATE CONCURRENT RESOLUTION 1
(By Senator Boettner)
[Adopted January 14, 1987.]

Adopting Joint Rules for the Senate and House of Delegates.

Resolved by the Legislature of West Virginia:

That the Joint Rules of the Senate and House of Delegates governing the sixty-seventh Legislature are hereby adopted to govern the proceedings of the sixty-eighth Legislature, subject to subsequent amendment.

SENATE CONCURRENT RESOLUTION 10
(By Senators Kaufman and Harman)
[Adopted March 11, 1987.]

Requesting members of the West Virginia congressional delegation to study and initiate legislation to establish a national park within the State of West Virginia.

WHEREAS, The State of West Virginia is blessed with a variety of unique and picturesque natural areas, such as Dolly Sods and Otter Creek Wilderness Areas and Cranberry Back Country; and

WHEREAS, Many of these areas are preserved either entirely, or almost entirely within federal ownership; and

WHEREAS, Classification of one or more of these unique areas in national park status would be the most straightforward expression of the intent of the people of West Virginia to preserve the natural beauty of the State; and

WHEREAS, Many of the communities surrounding these unique areas are economically disadvantaged and would benefit greatly from increased employment and income in the tourism and recreation industries if the areas were dedicated to national park status; therefore, be it

Resolved by the Legislature of West Virginia:

That members of the State's congressional delegation are hereby requested to review, examine and study the feasibility of establishing a national park within the State of West Virginia; and, be it
Further Resolved, That if the members of the congressional delegation determine there is an interest and desire for a national park to be established within the State, that they sponsor and support legislation necessary to effectuate this recommendation; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to members of the congressional delegation.

 SENATE CONCURRENT RESOLUTION 38
(Originating in the Senate Committee on Rules)
[Adopted March 14, 1987.]

Providing for the extension of the regular session of the sixty-eighth Legislature of West Virginia.

Resolved by the Legislature of West Virginia two thirds of the members elected to each house agreeing thereto:

That the regular session of the sixty-eighth Legislature is hereby extended 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, salary bills, revenue producing bills, sunset bills and bills in conference. Further, for reconsideration of any bills vetoed or disapproved by the Governor and any budget bill or supplementary appropriation bill vetoed, disapproved, reduced or increased by the Governor as to any item or part or as to the entire bill; and, be it

Further Resolved, That when adjournment is taken by the two houses of the Legislature at the close of their respective sessions on the 14th day of March, 1987, such adjournment shall be until 6 p.m. on the 16th day of March, 1987, pursuant to Section 23, Article VI of the Constitution of the State of West Virginia, unless the Legislature is called to reconvene prior thereto by a majority vote of the Committee on Rules of both houses, in which event such adjournment shall be until the date and time of reconvening specified by said committees. The Legislature hereby expressly authorizes said Committees on Rules, to which this authority is hereby expressly delegated, to call the Legislature to reconvene this extension of the
regular session prior to 6 p.m. on the 16th day of March, 1987, as herein provided.

SENATE RESOLUTION 6
(By Senator Burdette)
[Adopted January 14, 1987.]

Creating a Select Committee on Quality Education.

Resolved by the Senate:

That for a period of time not to exceed the term of the sixty-eighth Legislature there is hereby created a Senate Select Committee on Quality Education. This committee shall consist of five members of the Senate and eight citizen members as appointed by the President who may authorize payment of members' and citizens' expenses. Notwithstanding the provisions of any Senate rule to the contrary, this committee shall have jurisdiction of legislative proposals affecting the education in the State of West Virginia as the President may deem appropriate: Provided, That the rules of the Senate governing Standing Committees shall govern the actions and proceedings of this committee insofar as applicable.

SENATE RESOLUTION 15
(By Senators Kaufman and Holliday)
[Adopted February 23, 1987.]

Requesting the Capitol Building Commission to study ways to improve the accessibility of the State Capitol to the handicapped.

Whereas, The State Capitol is the seat of government of all West Virginians and must be accessible to all West Virginians to provide them their full rights as citizens to meet with their elected representatives, to do business with the state agencies located in the Capitol, to visit and admire the beautiful Capitol Building; and to observe the debates and proceedings of the State Legislature; and

Whereas, The Capitol is filled at every turn with steps which constitute barriers to the handicapped and with antiquated elevators which unpredictably and without
warning slam shut, endangering those in wheelchairs and on crutches; and

WHEREAS, Making public buildings accessible to the handicapped is both a legal obligation and a moral imperative; therefore, be it

Resolved by the Senate:

That the Capitol Building Commission is hereby requested to study ways to improve the accessibility of the State Capitol Building to the handicapped, and to consider the comments of organizations representing the handicapped when defining the nature and scope of the problem and formulating possible alternative solutions, and shall present its findings and recommendations to the Governor and to the Legislature not later than the first day of January, one thousand nine hundred eighty-eight.
AN ACT supplementing, amending and increasing the
amounts appropriated and specified as available for
payment of compensation awards to victims of crimes
from the crime victim compensation fund, for the 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 chapter
twenty-nine, acts of the Legislature, regular session, one
thousand nine hundred eighty-six, known as the budget
bill and as the same was further supplemented by
Enrolled House Bill No. 2185 of such session.

Be it enacted by the Legislature of West Virginia:

That “Sec. 5. Awards for claims against the state.” section
of chapter twenty-nine, acts of the Legislature, regular session,
one thousand hundred eighty-six, known as the budget bill, as
supplemented by Enrolled House Bill No. 2185 enacted at such
session, be hereby further supplemented, amended and
additional amounts appropriated from the crime victim
compensation fund as herein specified in such section for
payment of compensation awards made in general law enacted
at the second extraordinary session of the Legislature, one thousand nine hundred eighty-six, and with such section 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 fund as designated, in the amounts as specified and for the claimants as named in enrolled house bill 1871, acts of the Legislature, regular session, 1986, crime victims compensation fund, moneys in the amount of $529,478.25 for payment of compensation awards to victims of crimes claims against the state. Additionally, there is hereby appropriated for the fiscal year ending June 30, 1987, from the crime victims compensation fund, moneys in the amount of $1,232,792.67 for payment of the compensation awards to victims of crime as made, named and specified in the enrolled bill enacted at the second extraordinary session of the Legislature, 1986, which established compensatory awards as a moral obligation of 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 $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 appropriate and make available for payment additional moneys from the crime victims compensation fund for payment of the additional crime victims compensation awards and moral obligations as found and determined by the Legislature at the second extraordinary session, Legislature, 1986, and in the enrolled bill enacted at such time, for which this supplementary appropriation bill provides funding.
These additional moneys, appropriated from the crime victims compensation fund, become available for expenditure and payment upon the effective date of this bill and within the fiscal year ending June 30, 1987.

CHAPTER 2
(H. B. 210—By Delegate Chambers)

[Passed July 23, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four; to amend and reenact section three, article three of said chapter forty-eight-a; to amend and reenact sections one, two, three, four, five, six, seven, eight and nine, article four of said chapter forty-eight-a; to further amend said article four by adding thereto three new sections, designated sections ten, eleven and twelve; and to amend and reenact section three, article five of said chapter forty-eight-a, relating generally to establishing expedited processes to improve the establishment of, compliance with, and enforcement of child support obligations and the resolution of related domestic relations matters; providing for the severability of the provisions of said chapter; prescribing the duties of the 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 and providing for the appointment of such 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 file recommended decisions; providing for orders to be entered by the circuit court with the exception of certain pendente lite orders; providing for review of a master's action or a master's recommended decision; describing the procedure for review by the
circuit court, form of petition for review, brief in opposition and review; describing when review should occur and the matters to be considered upon review; setting forth legislative findings and intent; providing for the termination of the masters system by operation of law; 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.

Be it enacted by the Legislature of West Virginia:

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

Article
2. Children's Advocate.
4. Remedies for the Enforcement of Support Obligations and Visitation.

ARTICLE 1. GENERAL PROVISIONS.


1 The provisions of every section or article of this chapter, whether enacted before or subsequent to the effective date of this section, shall be severable so that if any provision of any such section or article is held unconstitutional or void, the remaining provisions of such section or article shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the
unconstitutional or void provision that the court cannot
presume the Legislature would have enacted the
remaining valid provisions without the unconstitutional
or void one, or unless the court finds the remaining valid
provisions, standing alone, are incomplete and are
incapable of being executed in accordance with the
legislative intent. The provisions of this section shall be
fully applicable to all future amendments or additions
to this chapter, with like effect as if the provisions of
this section were set forth in extenso in every such
amendment or addition and were reenacted as a part
thereof, unless such amendment or addition contains its
own severability clause.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3. Duties of the children's advocate.

(a) The children's advocate shall make available to the
public an informational pamphlet, designed in consul-
tation with the director. 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 to a domestic relations
proceeding shall receive an oral explanation of the
informational pamphlet from the office of the children's
advocate.

(b) At any time while a domestic relations matter is
pending, the circuit court or the family law master may
direct the children's advocate to investigate all relevant
facts and make a written report and recommendation
to the parties and to the court regarding child support,
spousal support or child custody. 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 practi-
cable. 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.

(c) 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.

(d) 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.

(e) The children's advocate shall pursue the enforcement 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.

(f) 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 maintenance 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.

(g) 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.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; location of offices; matters to be heard by master; fees for hearings; 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. Recommended decisions.
§48A-4-5. Orders to be entered by circuit court exclusively.
§48A-4-6. Circuit court review of master's action or recommended decision.
§48A-4-7. Procedure for review by circuit court.
§48A-4-8. Form of petition for review.
§48A-4-9. Brief in opposition to a petition for review.
§48A-4-10. Circuit court review of master's recommended decision.
§48A-4-11. Legislative findings and intent.
§48A-4-12. Termination of family law masters system by law.

§48A-4-1. Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; location of offices; matters to be heard by master; fees for hearings; notice of master's hearing; content of notice; determination of issues by consent; hearing.

(a) On or before the fifteenth day of September, one thousand nine hundred eighty-six, 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, and such initial appointments of individuals as family law masters shall be for a term ending on the thirtieth day of June, one thousand nine hundred ninety. Thereafter, the length of the term of the office of family law master shall be four years, with terms commencing on the first day of July, one thousand
nine hundred ninety, and on a like date in every fourth year thereafter, and ending on the thirtieth day of June, one thousand nine hundred ninety-four, and on a like date in every fourth year thereafter. 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. If from any cause a vacancy shall occur in the office of family law master, the governor shall, within thirty days after such vacancy occurs, fill such vacancy by appointment for the unexpired term: Provided, That if the remaining portion of the unexpired term to be filled is less than one year, the governor may, in his discretion, simultaneously appoint an individual to the unexpired term and to the next succeeding full four-year term. An individual may be reappointed to succeeding terms as a family law master to serve in the same or a different area of the state.

(b) No individual may be appointed to serve as a family law master unless he or she is a member in good standing of the West Virginia State Bar.

(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 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. Each county commission of
this state shall enter into an agreement with the
administrative office of the supreme court of appeals
whereby the administrative office of the supreme court
of appeals shall contract to pay to the county commission
a reasonable amount as rent for premises furnished by
the county commission to the family law master, which
premises shall be adequate for the conduct of the duties
required of such master under the provisions of this
chapter.

(f) A family law master appointed under the provi-
sions 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 and shall be appointed by the family law master
and serve at his or her will and pleasure. 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 county of Cabell;
(7) The counties of McDowell and Wyoming;
(8) The counties of Logan and Mingo;
(9) The county of Kanawha;
(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;
(20) The counties of Berkeley, Jefferson and Morgan;
(21) The counties of Boone, Lincoln and Wayne.

The governor shall appoint two masters to the office of the family law master for the area of Kanawha County. In each of the other areas defined by this subsection, the governor shall appoint one person as family law master from such area. Nothing contained herein shall prohibit the chief justice of the supreme court of appeals from temporarily assigning, from time to time as caseload may dictate, a family law master from one geographical area to another geographical area.

(i) A circuit court or the chief judge thereof shall
refer to the master the following matters for hearing to be conducted pursuant to section two of this article:

(1) Actions to obtain orders of support brought under the provisions of section one, article five of this chapter and commenced after the first day of October, one thousand nine hundred eighty-six;

(2) All actions to establish paternity under the provisions of article six of this chapter and commenced after the first day of January, one thousand nine hundred eighty-seven: Provided, That all actions wherein either or both of the parties have demanded a trial by jury of the law and the facts shall be heard by the circuit court;

(3) All motions for pendente lite relief affecting child custody, visitation, child support or spousal support filed on or after the first day of November, one thousand nine hundred eighty-six, wherein either party has requested such referral or the court on its own motion in individual cases or by general order has referred such motions to the master: Provided, That if the circuit court determines, in its discretion, that the pleadings raise substantial issues concerning the identification of separate property or the division of marital property which may have a bearing on an award of support, the court may decline to refer a motion for support pendente lite to the family law master;

(4) All petitions for modification of an order involving child custody, child visitation, child support or spousal support filed after the first day of December, one thousand nine hundred eighty-six;

(5) After the first day of November, one thousand nine hundred eighty-six, all actions for divorce which are matured for final hearing as 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;

(6) After the first day of October, one thousand nine
hundred eighty-six, all actions wherein an obligor is
 contesting the enforcement of an order of support
 through the withholding from income of amounts
 payable as support or is contesting an affidavit of
 accrued support, filed with a circuit clerk, which seeks
to collect arrearages;

(7) After the first day of December, one thousand nine
hundred eighty-six, all actions commenced under the
provisions of article seven of this chapter or under the
provisions of the revised uniform reciprocal enforcement
of support act of any other state;

(8) After the first day of January, one thousand nine
hundred eighty-seven, proceedings for the enforcement
of support, custody, or visitation orders, including
contempt, unless the alleged contemnor in such proceed-
ing has a right to trial by jury which has not been
waived; and

(9) After the first day of January, one thousand nine
hundred eighty-seven, contested divorce actions ma-
tured for final hearing, if in the discretion of the circuit
judge such referrals are appropriate: Provided, That the
circuit judge shall make such referrals on a case-by-case
basis.

(j) The fees for hearings before a master shall be paid
unless a party is excused from payment thereof under
the provisions of section one, article two, chapter fifty-
nine of this code.

(k) Fees for hearings before a master shall be taxed
as court costs, which costs may be assessed against
either party or apportioned 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
recommended decision. 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 pendente lite relief affecting custody, visitation, child support or spousal support, fifty dollars;

(4) For a petition for modification of an order involving child custody, child visitation, child support or spousal support, fifty dollars;

(5) For an uncontested divorce action, fifty dollars;

(6) For a proceeding for the enforcement of an order, fifty dollars.

(7) For a contested divorce action matured for final hearing, fifty dollars for the first hour or any portion thereof, and thirty dollars per hour for each subsequent hour or any portion thereof.

(l) 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.

(m) 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 settle or compromise 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.

(n) The master who presides at the reception of evidence pursuant to section two of this article shall make the recommended decision required by section three 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 taking of evidence.
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 docu-
ments, 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 simplifica-
tion 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) Recommend decisions in accordance with the provisions of section three of this article; and

(11) Take other action authorized by general order of the circuit court or the chief judge thereof consistent with the provisions of 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 court, the cost of preparing a transcript shall be paid by the party requesting the transcript.

(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, shall be made available to the parties. When a master's recommended decision 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 prepare a default order for entry by the circuit judge, which order 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 if the obligee or custodian were eligible to receive public assistance, unless the family law master has sufficient information in the record so as to determine the amount to be fixed 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 make and enter pendente lite support and custody orders which, when entered, shall be enforceable and have the same force and effect under law as pendente lite support orders made and entered by a judge of the circuit court, unless and until such support orders are modified, vacated, or superseded by an order of the circuit court.

(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. Recommended decisions.

(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 recommend a decision to the circuit court within ten days following the close of the evidence. Before the recommended decision is made, 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 before the circuit court takes any action on the recommendation.

(d) All recommended decisions of the master shall include (1) 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 (2) the proposed order embodying the appropriate sanction, relief, or denial thereof.

§48A-4-5. Orders to be entered by circuit court exclusively.

With the exception of pendente lite support and custody orders entered by a master in accordance with the provisions of section three of this article, an order imposing sanctions or granting or denying relief may not be made and entered except by a circuit court within the jurisdiction of said court and as authorized by law.

§48A-4-6. Circuit court review of master's action or recommended decision.

A person who alleges that he or she will be adversely affected or aggrieved by a recommended decision of a master is entitled to review of the proceedings. The recommended decision of the master 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 recommended decision by the circuit court.

§48A-4-7. Procedure for review by circuit court.

(a) Within ten days after the recommended decision of a master is returned and filed, 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-4-8. Form of petition for review.

The petition for review shall contain, in the order indicated:

(a) A list of exceptions in the form of questions presented for review, expressed in the terms and circumstances of the case, designating and pointing out the errors complained of with reasonable certainty, so as to direct the attention of the circuit court specifically to them, 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. Parts of the master’s report not excepted to are admitted to be correct, not only as regards the principles, but as to the evidence upon which they are founded.

(b) A concise statement of the case containing the facts material to a consideration of the questions presented.

(c) A direct and concise argument amplifying the reasons relied upon for modification of the master’s recommended decision and citing the constitutional provisions, statutes and regulations which are applicable.

§48A-4-9. 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 recommended
decision of the master should not be modified by the
court in the manner sought by the petition.

(b) No motion by a respondent to dismiss a petition
for review will be received.

(c) 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-4-10. Circuit court review of master's recom-
mended decision.

(a) The circuit court shall proceed to a review of the
recommended decision of the master when:

(1) No petition has been filed within the time allowed,
or the parties have expressly waived the right to file a
petition;

(2) A petition and brief in opposition have been filed,
or the time for filing a brief in opposition has expired,
or the parties have expressly waived the right to file a
brief in opposition, as the case may be.

(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 recommended decision of the master.

(c) The circuit court shall examine the recommended
decision of the master, along with the findings and
conclusions of the master, and may enter an order in
conformance with the recommended decision, may
recommit the case, with instructions, for further
hearing before the master or may, in its discretion, enter
an order upon different terms, as the ends of justice may
require. The circuit court shall not follow the recom-
mandation, findings, and conclusions of a master found
to be:

(1) Arbitrary, capricious, an abuse of discretion, or
otherwise not in conformance with the law;
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(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;

(5) Unsupported by substantial evidence; or

(6) Unwarranted by the facts.

(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. If the circuit court finds that a master’s recommended decision is deficient as to matters which might be affected by evidence not considered or inadequately developed in the master’s recommended decision, the court may recommit the recommended decision to the master, with instructions indicating the court’s opinion, or the circuit court may proceed to take such evidence without recommitting the matter.

(e) The order of the circuit court entered pursuant to the provisions of subsection (d) of this section shall be entered not later than ten days after the time for filing pleadings or briefs has expired or after the filing of a notice or notices waiving the right to file such pleading or brief.

(f) If a case is recommitted by the circuit court, the master shall retry the matter within twenty days.

(g) At the time a case is recommitted, the circuit court shall enter appropriate pendente lite orders awarding custody, visitation, child support, spousal support or such other temporary relief as the circumstances of the parties may require.

§48A-4-11. Legislative findings and intent.

In enacting the provisions of this article during the second extraordinary session of the Legislature, one thousand nine hundred eighty-six, the Legislature makes its findings of fact and asserts its statements of purposes and intent as follows:
During the regular session of the Legislature, one thousand nine hundred eighty-six, the Legislature enacted Enrolled House Bill 2094, a comprehensive act which dealt with domestic relations law generally and child support and other related issues specifically. In that legislation, the Legislature provided for expedited procedures in actions involving child support and related domestic relations matters.

Since the passage of said Enrolled House Bill 2094, the expedited procedures established by the Legislature have been found by the supreme court of appeals to be unconstitutional on the grounds that the legislation attempted to divest the circuit courts of this state of their constitutional jurisdiction for divorce and other domestic matters.

In order to comply with federal law regarding child support enforcement, it is incumbent upon the Legislature to create an expedited process for obtaining and enforcing child support orders. Failure to meet federal standards poses a threat to the state in the form of a loss of public assistance funds and the unavailability of incentive payments based on support collections.

In West Virginia, as in other states, numerous problems arise out of establishing and enforcing child support orders through the traditional court system. As the volume of support cases has grown and the use of courts in general to resolve disputes has increased, the result has been lengthy delays in resolving child support cases. In some cases, resolution of the issues is never attempted or resolved. In divorce cases, the not infrequent use of appointed commissioners, while easing the workload of the circuit court, can result in fees which are not reasonable and payment to a commissioner which is an undue financial burden. Further, jurisdiction and authority over support issues have been divided among the various personnel and officials who prepare and decide child support matters. There has been a lack of uniformity in the establishment of appropriate support amounts. Use of the traditional court system to determine and enforce child support obligations has exacerbated the adversarial nature of the proceedings,
and furthered the division between parents, often diminishing the desire to meet such obligations.

It is the intention of the Legislature, with the passage of this legislation, to reconcile the requirements of federal law, the ruling of the supreme court of appeals as to the constitutional jurisdiction of the circuit courts, and the needs of this state. The Legislature desires to fully protect the constitutional jurisdiction of the courts while complying with applicable federal law and creating in this state a unified set of family law remedies to eliminate the problems identified herein.

If, in fact, the ruling of the supreme court of appeals as to the jurisdiction of the circuit courts precludes the use of any expedited process, administrative or quasi-judicial, in which the presiding officer is not a judge, then compliance with federal law would be impossible, absent an amendment to the Constitution of the state. Accordingly, the Legislature has adopted the approach embodied in this legislation to avoid that drastic action.

The expedited process set forth herein is modeled upon traditional equity practice in this state which has utilized commissioners in chancery, masters, master's reports and recommended decisions, authoritative review by the circuit courts and other devices of an equitable nature.

Further, the Legislature anticipates that the procedural rule-making power of the supreme court of appeals provided for in the Judicial Reorganization Amendment of 1974 to the West Virginia Constitution and in section four, article one, chapter fifty-one of this code may be utilized, so that the portions of this legislation relating to pleading, practice and procedure shall have force and effect only as rules of court and remain in effect unless and until modified, suspended or annulled by rules promulgated by the supreme court of appeals.

§48A-4-12. Termination of family law masters system by law.

The family law masters system shall be terminated on the first day of July, one thousand nine hundred ninety-
3 one, unless review of its functions shall be undertaken
4 pursuant to the provisions of sections nine, ten and
5 eleven, article ten, chapter four of this code.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS AND VISITATION.

§48A-5-3. Withholding from income of amounts payable
as support.

1 (a) An order which provides for the withholding of
2 amounts payable as support shall be enforced by the
3 children's advocate in accordance with the provisions of
4 this section. Every support order entered by a circuit
5 court or a magistrate of this state prior to the first day
6 of July, one thousand nine hundred eighty-six, and every
7 support order entered by a court of competent jurisdic-
8 tion of another state shall be considered to provide for
9 an order of income withholding by operation of law,
10 notwithstanding the fact that such support order does
11 not in fact provide for such an order of withholding.
12 Under such orders, income withholding shall be imple-
13 mented under the same circumstances and enforced in
14 the same manner as in the case of orders of withholding
15 which are included in support orders entered on or after
16 the first day of July, one thousand nine hundred eighty-
17 six.

18 (b)(1) When required to pursue the enforcement of an
19 order of support through the withholding of income in
20 accordance with the provisions of subsection (e), section
21 three, article three of this chapter, the children's
22 advocate shall cause the mailing of a notice pursuant to
23 this section when the support payments required by the
24 order are in arrears a specific number of days, as
25 follows:

26 (A) If the order requires support to be paid in
27 monthly installments, the notice shall be sent on the day
28 when the support payments are thirty days in arrears;
29 or

30 (B) If the order requires support to be paid in weekly
31 or bi-weekly installments, the notice shall be sent on the
32 day when the support payments are twenty-eight days
33 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 amendment 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 with-
held, 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 enforce-
ment 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
to the amount permitted to be
(11) That matters such as lack of visitation, inappro-
(12) That if the obligor contests the withholding, in
(13) That if the meeting with the children's advocate
(14) That a master's recommended decision as to
(e) After a final determination that withholding
should occur, the children's advocate shall proceed to
(withholding, up to the maximum amount permitted under applicable
law. Such withholding, unless otherwise terminated
under the provisions of this section, shall apply to any
subsequent source of income or any subsequent period
of time during which income is received by the obligor.
(f) Notwithstanding any other provision of this code
to the contrary which provides for a limitation upon the
amount which may be withheld from earnings through
legal process, the amount of an obligor's aggregate
disposable earnings for any given workweek which can
be withheld as support payments is to be determined in accordance with the provisions of this subsection, as follows:

(1) After ascertaining the status of the payment record of the obligor under the terms of the support order, the payment record shall be examined to determine whether any arrearages are due for amounts which should have been paid prior to a twelve week period which ends with the workweek for which withholding is sought to be enforced.

(2) If none of the withholding is for amounts which came due prior to such twelve week period, then:

(A) When 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 percent of the obligor's 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.

(g) 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 with-
holding 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.

(h) The director shall, by administrative rule, estab-
lish procedures for promptly refunding to obligors
amounts which have been improperly withheld under
the provisions of this section.

(i) A source of income must send the amount to be
272 withheld from the obligor's income to the child advocate
273 office within ten days of the date the obligor is paid.
274
275 (j) In addition to any amounts payable as support
276 withheld from the obligor's income, the source of income
277 may deduct a fee, not to exceed fifty cents, for admin-
278 nistrative costs incurred by the source of income, for
279 each withholding.
280
281 (k) Withholding of amounts payable as support under
282 the provisions of this section is binding on the source of
283 income until further notice by the child advocate office.
284
285 (l) Every source of income who receives a notice of
286 withholding under the provisions of this section shall
287 implement withholding no later than the first pay
288 period or first date for the payment of income which
289 occurs after fourteen days following the date the notice
290 to the source of income was mailed.
291
292 (m) A source of income who employs or otherwise
293 pays income to an obligor who is subject to withholding
294 under the provisions of this section must notify the child
295 advocate office promptly when the obligor terminates
296 employment or otherwise ceases receiving income from
297 the source of income, and must provide the office with
298 the obligor's last known address and the name and
299 address of the obligor's new source of income, if known.
300
301 (n) A source of income who has more than a single
302 obligor who is subject to withholding from income under
303 the provisions of this article may combine all withheld
304 amounts into a single payment to the child advocate
305 office, with the portion thereof which is attributable to
306 each obligor being separately designated.
307
308 (o) A source of income is liable to an obligee, includ-
309 ing the state of West Virginia or the department of
310 human services where appropriate, for any amount
311 which the source of income fails to withhold from
312 income due an obligor following receipt by such source
313 of income of proper notice under subsection (h) of this
314 section: Provided, That a source of income shall not be
315 required to vary the normal pay and disbursement
316 cycles in order to comply with the provisions of this
317 section.
(p) Support collection under the provisions of this article shall have priority over any other legal process under state law against the same wages.

(q) 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 nor more than one thousand dollars.

(r) 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.

CHAPTER 3
(S. B. 10—By Senator Tomblin)

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

AN ACT to amend and reenact section two, article three, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating
to the children's advocate office location and number of employees.

Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter forty-eight-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. CHILDREN'S ADVOCATE.

§48A-3-2. Placement of children's advocates throughout the state; supervision; office procedures.

(a) The child advocate office shall employ twenty-one 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 county of Cabell;
7. The counties of McDowell and Wyoming;
8. The counties of Logan and Mingo;
9. The county of Kanawha;
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;
The counties of Monongalia and Preston;
(18) The counties of Barbour, Randolph and Tucker;
(19) The counties of Grant, Hampshire, Hardy, Mineral and Pendleton;
(20) The counties of Berkeley, Jefferson and Morgan;
and
(21) The counties of Boone, Lincoln and Wayne.

(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.

CHAPTER 4

(H. B. 207—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of the Executive)

[Passed July 20, 1986; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

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 the 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 for the purpose.

Claims for crime victims compensation awards:

(TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

14 (1) Carol L. Adkins ................ $ 833.33
15 (2) Lynn Adkins and Sue A. Pennington Co-Administrators
17 of the Estate of Elmer L. Soler .. $ 1,382.50
18 (3) Melissa Albright ................ $ 2,451.60
19 (4) Steven M. Aldridge ............... $ 4,193.62
20 (5) Arthur Lee Apitzsch ............... $ 20,000.00
21 (6) Nicholas Pete Arvon ............... $ 78.53
22 (7) William A. Behnke ................. $ 877.02
23 (8) James E. Bennett ................ $ 712.80
24 (9) Gregory M. Berry ................ $ 416.00
25 (10) Kenneth W. Bird ................ $ 1,388.45
26 (11) Mark B. Blackburn ................. $ 20,000.00
27 (12) Mary R. Blankenship .......... ... $ 1,250.00
28 (13) Brenda L. Bowen ................. $ 705.00
29 (14) Robert Earl Brannen ............. $ 1,885.00
30 (15) Julia B. Burleson ............... $ 1,250.00
31 (16) James Don Bush ................ $ 2,500.00
32 (17) Wanda L. Bush ................ $ 41,875.00
33 (18) Wanda L. Bush as guardian
34 of Shane Dell Bush ................ $ 5,625.00
35 (19) James M. Byrd ................ $ 311.24
36 (20) Daniel R. Cahill ................. $ 787.75
37 (21) Howard B. Candler and
39 Betty J. Candler ................ $ 1,250.00
38 (22) June K. Carden ................ $ 2,642.87
39 (23) Joseph B. Cecil ................ $ 6,156.77
40 (24) Jimmy K. Chambers ................ $ 5,021.45
41 (25) Yvonne M. Chambers ............... $ 23,070.74
42 (26) Yvonne M. Chambers as guardian
44 of Leona Marie Chambers.............. $ 13,464.63
43 (27) Yvonne M. Chambers as guardian
45 of Tina Louise Chambers .............. $ 13,464.63
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AN ACT to amend and reenact section five, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty by adding thereto a new section, designated section five-b, relating to the borrowing of money by the West Virginia regional jail authority from the consolidated fund established under the provisions of subsection (b), section eight, article six, chapter twelve of the code.

Be it enacted by the Legislature of West Virginia:
That section five, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article twenty be further amended by adding thereto a new section, designated section five-b, all to read as follows:

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON AUTHORITY.

§31-20-5. Powers and duties of the authority; bidding procedures.
§31-20-5b. Authority of the West Virginia board of investments to make interest-bearing loans to the West Virginia regional jail authority.

§31-20-5. Powers and duties of the authority; bidding procedures.

The regional jail and prison authority shall complete a comprehensive study of all prison and jail facilities in the state of West Virginia no later than the first day of July, one thousand nine hundred eighty-six. This study shall include an assessment of the physical conditions of confinement within the institutions and the relative need for the institutions when considering other available institutions of confinement located within the state.

After completing this study, the authority shall submit a plan to the governor on the establishment of regional jails in this state and the acquisition, construction or renovation of facilities for prisons. The authority shall specify groups of counties within the state to be formed into regions for the establishment of such regional jails. Within each region a local jail commission shall be established and have the powers and duties as set forth in section six of this article.

The authority shall consider, but not be limited to, the following when creating the plan establishing regions:

(1) The relative physical condition of the prisons and jail facilities located within the state;

(2) The transportation costs associated with the establishment of centralized jail services including, but not limited to, the costs of transporting persons incarcerated in regional jails to court appearances, to interviews with their attorneys and to have visitation
with their families and friends, all in any county seat
of a county served by the regional facility;

(3) The availability of medical services and educa-
tional and recreational opportunities;

(4) Information received from public hearings;

(5) The relative efficiency in the cost of jail services
caused by establishment of regional jail facilities;

(6) Available facilities which may be used as regional
jails or prisons including, but not limited to, existing
county and state owned properties;

(7) The cost of acquiring, constructing, renovating,
operating and maintaining local jail facilities for use as
local holding facilities in each county and regional jail
facilities for each county and the financing provided by
this article;

(8) The leasing of any available portion of any
regional jail space and the leasing of available facilities
of any regional jail to the West Virginia department of
corrections for the keeping and detaining of prisoners
sentenced to serve terms of incarceration under the
custody of the West Virginia department of corrections
for nonviolent crimes and to contract with the depart-
ment of corrections for the providing of food, clothing,
shelter and any and all incidental costs in the care,
control and maintenance of such prisoners: Provided,

That such leasing does not restrict space or facilities
needed for the detention of county prisoners;

(9) The advisability and cost effectiveness of acquir-
ing, constructing, renovating, operating and maintain-
ing work farms serving one or more counties or regions;

and

(10) The proximity of possible sites for the regional
jail facilities to residential areas, schools, churches and
other public buildings and facilities.

Public hearings pursuant to this section shall be held
by the authority in convenient locations throughout the
state. No less than ten public hearings shall be held for
public comment on the establishment of regional jails.
The authority shall cause to be published at least two weeks in advance of a hearing a Class II-0 legal advertisement, as provided in section two, article three, chapter fifty-nine of this code, setting forth the reason for the hearing and the time, place and date thereof. The publication area shall be each county which may be included in a region for the purposes of a regional jail with the county in which the public hearing is held.

In addition to the hearing requirements above, before beginning construction of a new facility for use as a regional jail or prison facility or before beginning renovation or acquisition of an existing facility for use as a regional jail facility, which existing facility is not already a jail, prison or secure facility for the detention of juveniles or persons otherwise involuntarily committed or confined, the authority shall hold a hearing for comment by all members of the public on all aspects relating to the advisability of the use of the site for that regional jail facility. The authority shall promulgate rules and regulations pursuant to chapter twenty-nine-a of this code for the requirements for notice and other procedures of said public hearings which requirements shall be as similar as practicable to those hearings conducted regarding the construction of bridges by the West Virginia department of highways.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

(a) To acquire, own, hold and dispose of property, real and personal, tangible and intangible.

(b) To lease property, whether as lessee or lessor.

(c) To mortgage or otherwise grant security interests in its property.

(d) 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 construction or renovation of any correctional
facility or the establishment of any prison industries
project.

(e) 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.

(f) 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.

(g) To sue and be sued, implead and be impleaded,
and complain and defend in any court.

(h) To adopt, use and alter at will a corporate seal.

(i) To make bylaws for the management and regula-
tion of its affairs pursuant to article three, chapter
twenty-nine-a of this code.

(j) To appoint officers, agents and employees.

(k) To make contracts of every kind and nature and
to execute all instruments necessary or convenient for
carrying on its business.

(l) 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.

(m) 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: Provided,
That no bond or other obligation, except for loans for
the seven facilities provided for under the provisions of
section five-b of this article, may be issued or incurred
unless and until the Legislature by concurrent resolu-
tion has approved the purpose and amount of each
project for which proceeds from the issuance of such
bond or other obligation will be used: Provided, however,
That the authorization for loans under the provisions of section five-b of this article is in lieu of the issuance of bonds as authorized by this section, and any provision of this code to the contrary notwithstanding, or any authorizing language contained in any concurrent resolution of the Legislature to the contrary notwithstanding, the authority shall not issue bonds as herein provided until and after the first day of July, one thousand nine hundred eighty-seven.

(n) To sell at public or private sale any bond or other negotiable instrument, security interest or obligation of the authority in such manner and upon such terms as the authority considers would best serve the purposes of this article.

(o) To issue its bonds, security interests and notes payable solely from the revenues or other funds available to the authority therefor; and the authority may issue its bonds, security interests or notes in such principal amounts as it considers necessary to provide funds for any purposes under this article, including:

(1) 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.

(2) 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.

(p) To issue renewal notes or security interests, to issue bonds to pay notes or security interests and, whenever it considers 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 may be issued to mature more than twenty-five years from the date of issuance.

(q) 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.

(r) To borrow money from the consolidated fund established by the provisions of subsection (b), section eight, article six, chapter twelve of this code, in accordance with the provisions of section five-b of this article.

(s) 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.

(t) 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 interest, note or contract or agreement of any kind to which the authority is a party.

(u) 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.

(v) To promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law.

(w) To assume the responsibility for operation and
management of regional jail facilities under the jurisdiction of the state regional jail and prison authority including the transportation of persons incarcerated therein for all required purposes including, but not limited to, court appearances and reasonable interviews with their attorney or visitation with their family and friends, all in the county seat of any county served by the regional facility.

(x) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate prisons after first providing for regional jail facilities.

§31-20-5b. Authority of the West Virginia board of investments to make interest-bearing loans to the West Virginia regional jail authority.

(a) The West Virginia board of investments as heretofore created and constituted under the provisions of article six, chapter twelve of this code, shall be ex officio a board of investments for state and local government funds in the consolidated fund established under the provisions of subsection (b), section eight, article six, chapter twelve of this code as they are made available for borrowing by the West Virginia regional jail authority in accordance with the provisions of this section, and as such, the board of investments may exercise all of the powers and functions granted to it pursuant to the provisions of said article six in carrying out the duties assigned to it under the provisions of this section.

(b) Subject to the provisions of this section, the board of investments, on such terms and conditions as it deems appropriate, may invest moneys, securities and other assets of the consolidated fund in the form of interest-bearing loans to the regional jail authority for the purpose of constructing a new facility for use as a regional jail or prison facility or for the renovation or acquisition of an existing facility for use as a regional jail or prison facility.

(c) The terms of a loan made pursuant to the provi-
visions of subsection (b) of this section shall provide that the loan is made upon the following findings of the board of investments:

(1) That the prospective payments and appropriations to the regional jail authority, together with the character and value of any security pledged, furnish reasonable assurance of repayment of the loan in accordance with its terms;

(2) That the loan will bear interest at a rate determined by the board of investments to be reasonable, taking into account the current average yield on outstanding investments of the board of investments of the state and local funds in the consolidated fund established under the provisions of subsection (b), section eight, article six, chapter twelve of this code.

(d) The authority of the board of investments to make loans under the provisions of this article shall not at any time exceed thirty-five million dollars in the aggregate principal amount outstanding, nor shall it be used to finance the construction or renovation of more than seven facilities.

(e) Loans made under the provisions of this article shall be payable in full not later than twenty-five years from the date the loans are made.

(f) The board of investments shall require security for the loans to be made under this article at the time the commitment is made. Any commitment to make a loan under the provisions of this article shall contain all of the affirmative and negative covenants and other protective provisions that the board of investments determines are appropriate.

(g) The board of investments shall submit to the Legislature annually a full report of its activities under this section which it engaged in during any fiscal year when any loan made under the provisions of this section was outstanding.

(h) At any time an application for a loan under this section is pending or a loan under this section is outstanding, the board of investments is authorized to
inspect and copy all accounts, books, records, memoranda, correspondence, and other documents and transactions of the regional jail authority. The legislative auditor shall make such audits as may be deemed appropriate by the President of the Senate and the Speaker of the House of Delegates of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the regional jail authority. The legislative auditor shall report the results of all such audits to the Legislature.

(i) The authority of the board of investments to make loans under the provisions of this section shall expire on the first day of July, one thousand nine hundred eighty-seven.

CHAPTER 6

(Com. Sub. for S. B. 1—By Senators Tonkovich, Mr. President, by request, and Harman)

[Passed July 23, 1986; in effect from passage. Approved by the Governor.]

AN ACT to repeal section twenty-six, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, five, six, seven, ten, eleven, thirteen, eighteen, twenty-one and twenty-two, article fifteen-a of said chapter; and to further amend said article fifteen-a by adding thereto three new sections, designated sections three-a, eight and ten-a, all relating to the compensating use tax; defining terms used therein; imposing tax on the use in this state of tangible personal property; exempting from tax property that is per se exempt from the consumers sales and service tax; exempting from payment of the use tax transactions for which persons may issue an exemption certificate under the consumers sales and service tax for the same type of property; exempting sales of property upon which the consumers sales and service tax has been paid; exempting tangible personal property brought into the state by
a nonresident for his or her use or enjoyment while temporarily in this state; providing rule for determining tax when a nonresident person or business moves into this state; creating presumption that tangible personal property sold for delivery in this state was sold for use or other consumption in this state; providing for tax to be collected by retailers or remitted directly to the state tax commissioner; requiring retailers engaging in business in this state and making sales of tangible personal property for delivery into this state or with the knowledge, directly or indirectly, that the property is intended for use in this state to collect the use tax; permitting retailers not engaging in business in this state to collect the use tax; prohibiting retailers from absorbing tax; making it a misdemeanor to absorb tax; requiring quarterly remittance of collected tax by retailers; requiring users who do not pay tax to a retailer to quarterly remit such tax directly to the tax commissioner; authorizing credit against tax due on use of tangible personal property for which sales tax was lawfully paid in another state; allowing such credit to be applied against tax due on gasoline and special fuel consumed in this state after the thirtieth day of June, one thousand nine hundred eighty-five, which was subject to sales tax in another state; providing for imposition of use tax on gasoline and special fuels consumed in this state; providing rules for imposition and calculation of such tax; authorizing tax commissioner to semiannually determine average wholesale price of gasoline and special fuel, with such average wholesale price of gasoline and special fuel to not be less than ninety-seven cents per gallon; providing rules for computation of tax due from motor carriers and for returns and payment of tax; dedicating such tax to highways; providing rules for construction of such tax; expressing legislative intent to tax gasoline and special fuel used or consumed in this state after the thirtieth day of June, one thousand nine hundred eighty-five; prohibiting the tax commissioner from refunding or establishing a credit for tax paid subsequent to said thirtieth day of June, when such claim for refund or credit is based on purported nonexistence of the tax;
placing burden on seller to prove that sale was not at retail; providing for this burden to be met by seller taking, in good faith, a properly executed exemption certificate signed by the purchaser; requiring retailers to keep books and records; authorizing tax commissioner to examine such books and records; authorizing tax commissioner to revoke the business registration certificate of a retailer engaging in business in this state or of a retailer not engaging in business in this state who is registered to collect use tax for failure to comply with the requirements of the use tax law; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, five, six, seven, ten, eleven, thirteen, eighteen, twenty-one and twenty-two, article fifteen-a, chapter eleven of said code be amended and reenacted; and that said article fifteen-a be further amended by adding thereto three new sections, designated sections three-a, eight and ten-a, all to read as follows:

ARTICLE 15A. USE TAX.

§11-15A-3a. Moving residence or business into state.
§11-15A-4. Evidence of use.
§11-15A-10. Payment to tax commissioner.
§11-15A-10a. Credit for sales tax liability paid to another state.
§11-15A-18. Seller must show sale not at retail; presumption.
§11-15A-22. Canceling or revoking permits.


1 The following words, terms and phrases, when used
2 in this article, have the meanings ascribed to them in
this section, except where the context clearly indicates that a different meaning is required:

(1) "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of direct or indirect economic gain, benefit or advantage, and includes any purposeful revenue generating activity in this state.

(2) "Consumer" means any person purchasing tangible personal property from a retailer as defined in paragraph (7).

(3) "Lease" includes rental, hire and license.

(4) "Person" includes any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other group or combination acting as a unit, and the plural as well as the singular number.

(5) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

(6) "Purchase price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise: Provided, That cash discounts allowed and taken on sales shall not be included.

(7) "Retailer" means and includes every person engaging in the business of selling, leasing or renting tangible personal property for use within the meaning of this article, or in the business of selling, at auction, tangible personal property owned by the person or others for use in this state: Provided, That when in the opinion of the tax commissioner it is necessary for the efficient administration of this article to regard any salesmen, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they
operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers or persons, the tax commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this article.

(8) "Retailer engaging in business in this state" or any like term, unless otherwise limited by federal statute, shall mean and include, but not be limited to, any retailer having or maintaining, occupying or using, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent (by whatever name called) operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state pursuant to section forty-nine, article one, chapter thirty-one of this code.

(9) "Sale" means any transaction resulting in the purchase of tangible personal property from a retailer.

(10) "Seller" means a retailer, and includes every person selling or leasing tangible personal property in a transaction which is subject to the tax imposed by this article.

(11) "Tax commissioner" or "commissioner" means the state tax commissioner, or his delegate.

(12) "Tangible personal property" means tangible goods, wares and merchandise when sold by a retailer for use in this state.

(13) "Taxpayer" includes any person within the meaning of this section, who is subject to a tax imposed by this article, whether acting for himself or as a fiduciary.

(14) "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership, possession or
enjoyment of such property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property. As used in this definition, "enjoyment" includes a purchaser's right to direct the disposition of the property, whether or not the purchaser has possession of the property. The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside this state.


(a) General. — An excise tax is hereby levied and imposed on the use in this state of tangible personal property to be collected and paid as hereinafter provided, at the rate of five percent of the purchase price of such property.

(b) Said tax is hereby imposed upon every person using tangible personal property within this state. That person's liability is not extinguished until such tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in this state, or by a foreign retailer who is authorized by the tax commissioner to collect the tax imposed by this article, relieves the purchaser from further liability for the tax to which the receipt refers.

(c) Purchases of tangible personal property made from the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the state of West Virginia of a character not ordinarily readily obtainable within the state, shall not be subject to use tax when sold, if such industrial materials and equipment would not be subject to use taxes if such were sold outside of the state for use in West Virginia.

(d) This article shall not apply to purchases made by counties or municipal corporations.

1. The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this article:

(1) All articles of tangible personal property brought into the state of West Virginia by a nonresident individual thereof for his or her use or enjoyment while temporarily within this state or while passing through this state, except gasoline and special fuel: Provided, That fuel contained in the supply tank of a motor vehicle that is not a motor carrier shall not be taxable.

(2) Tangible personal property, the gross receipts from the sale of which are exempt from the sales tax by the terms of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and the property is being used for the purpose for which it was exempted.

(3) Tangible personal property, the gross receipts from the sale of which are derived from the sale of machinery, supplies and materials to contractors, or to persons engaged in the business of manufacturing, transportation, transmission, communication or in the production of natural resources in this state: Provided, That purchases of gasoline or special fuel from distributors or importers shall be taxable.

(4) Tangible personal property, the gross receipts or the gross proceeds from the sale of which are required to be included in the measure of the tax imposed by article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and upon which the tax imposed by said article fifteen has been paid.

(5) Tangible personal property, the sale of which in this state is not subject to the West Virginia consumers sales tax.

(6) Mobile homes utilized by the owners thereof as their principal year-round residence and dwelling: Provided, That use of these mobile homes shall be subject to tax at the three percent rate.
§11-15A-3a. Moving residence or business into state.

The tax imposed by this article shall not apply to tangible personal property purchased outside this state for use outside this state by a person who at that time was a nonresident natural person, or a business entity not actually doing business within this state, who or which later brings such tangible personal property into this state in connection with his establishment of a permanent residence or business in this state: Provided, That such property was purchased more than six months prior to the date it was first brought into this state, or six months prior to the establishment of such residence or business, whichever first occurs.

§11-15A-4. Evidence of use.

For the purpose of the proper administration of this article to prevent evasion of the tax, evidence that tangible personal property was sold by any person for delivery in this state shall be prima facie evidence that such tangible personal property was sold for use in this state.


The tax herein imposed shall be collected in the following manner:

(1) The tax upon the use of all tangible personal property, which is sold by a retailer engaging in business in this state, or by such other retailer as the tax commissioner shall authorize pursuant to section seven of this article shall be collected by such retailer and remitted to the state tax commissioner, pursuant to the provisions of sections six through ten, inclusive, of this article.

(2) The tax upon the use of all tangible personal property not paid pursuant to subsection one of this section shall be paid to the tax commissioner directly by any person using such property within this state, pursuant to the provisions of section eleven of this article.
§11-15A-6. **Collection by retailer.**

(a) Every retailer engaging in business in this state and making sales of tangible personal property for delivery into this state, or with the knowledge, directly or indirectly, that the property is intended for use in this state, that are not exempted under the provisions of section three of this article, shall at the time of making such sales, whether within or without the state, collect the tax imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the tax commissioner, if the tax commissioner shall, by regulation, so prescribe.

(b) Each such retailer shall list with the tax commissioner the name and address of all his agents operating in this state, and the location of any and all distribution or sales houses or offices or other places of business in this state.

§11-15A-7. **Foreign retailers.**

The tax commissioner may, in his discretion, upon application authorize the collection of the tax herein imposed by any retailer not engaging in business within this state, who, to the satisfaction of the tax commissioner, furnishes adequate security to ensure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax in such manner, and subject to such regulations and agreements as the tax commissioner shall prescribe. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property sold to his knowledge for use within this state, in the same manner and subject to the same requirements as a retailer engaging in business within this state. Such authority and permit may be canceled when, at any time, the tax commissioner considers the security inadequate, or that such tax can more effectively be collected from the person using such property in this state.

§11-15A-8. **Absorbing tax; criminal penalty.**

It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser,
consumer or user, directly or indirectly, that the tax or
any part thereof imposed by this article will be assumed
or absorbed by the retailer or that it will not be added
to the selling price of the property sold, or if added that
it or any part thereof will be refunded. The tax
commissioner shall have the power to adopt and
promulgate rules and regulations for adding such tax,
or the equivalent thereof, by providing different
methods applying uniformly to retailers within the same
general classification for the purpose of enabling such
retailers to add and collect, as far as practicable, the
amount of such tax. Any person violating any of the
provisions of this section within this state shall be guilty
of a misdemeanor and subject to the penalties provided
in section twenty of this article.

§11-15A-10. Payment to tax commissioner.

Each retailer required or authorized, pursuant to
section six or seven, to collect the tax herein imposed,
shall be required to pay to the tax commissioner the
amount of such tax on or before the fifteenth day of the
month next succeeding each quarterly period. At such
time, each retailer shall file with the tax commissioner
a return for the preceding quarterly period in such form
as may be prescribed by the tax commissioner showing
the sales price of any or all tangible personal property
sold by the retailer during such preceding quarterly
period, the use of which is subject to the tax imposed
by this article, and such other information as the tax
commissioner may deem necessary for the proper
administration of this article. The return shall be
accompanied by a remittance of the amount of such tax,
for the period covered by the return: Provided, That
where such tangible personal property is sold under a
conditional sales contract, or under any other form of
sale wherein the payment of the principal sum, or a part
thereof is extended over a period longer than sixty days
from the date of sale thereof, the retailer may collect
and remit each quarterly period that portion of the tax
equal to five percent of that portion of the purchase
price actually received during such quarterly period.
The tax commissioner, if he deems it necessary in order
to ensure payment to the state of the amount of such tax, may in any or all cases require returns and payments of such amount to be made for other than quarterly periods. The tax commissioner may, upon request and a proper showing of the necessity therefor, grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed by the retailer or his duly authorized agent, and must be certified by him to be correct.

§11-15A-10a. Credit for sales tax liability paid to another state.

(a) A person is entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property equal to the amount, if any, of sales tax lawfully paid to another state for the acquisition of that property: Provided, That the amount of credit allowed shall not exceed the amount of use tax imposed on the use of the property in this state.

(b) For purposes of this section:

(1) “Sales tax” includes a sales tax or compensating use tax imposed on the use of tangible personal property by the state in which the sale occurred; and

(2) “State” includes the District of Columbia but does not include any of the several territories organized by Congress.

(c) This section shall apply to claims for refund or credit of use tax filed after the thirty-first day of August, one thousand nine hundred eighty-six, for taxable purchases made on or after the first day of July, one thousand nine hundred eighty-five, that were legally subject to a sales tax or compensating use tax paid in another state and then also taxed under this article.


Any person who uses any tangible personal property upon which the tax herein imposed has not been paid either to a retailer or direct to the tax commissioner as herein provided, shall be liable therefor, and shall on or before the fifteenth day of the month next succeeding
each quarterly period pay the tax herein imposed upon 
all such property used by him during the preceding 
quarterly period in such manner and accompanied by 
such returns as the tax commissioner shall prescribe.
All of the provisions of section ten with reference to such returns and payments shall be applicable to the returns and payments herein required.


(a) Imposition of tax.

(1) On deliveries in this state. — Gasoline or special fuel furnished or delivered within this state to consumers or users is subject to tax at the rate imposed by section two of this article: Provided, That the amount of tax due under section two shall in no event be less than five percent of the average wholesale price of gasoline and special fuel and with such price to, in no case, be deemed to be less than ninety-seven cents per gallon for all gallons of gasoline and special fuel taxable under section two of this article.

(2) On purchases out of state. — An excise tax is hereby imposed on the use or consumption in this state of gasoline or special fuel purchased outside this state at the rate of five percent of the average wholesale price of such gasoline or special fuel, as determined under subsection (c), notwithstanding any provision of this article to the contrary: Provided, That gasoline or special fuel contained in the supply tank of a motor vehicle that is not a motor carrier shall not be taxable, except that gasoline or special fuel imported in the supply tank or auxiliary tank of construction equipment, mining equipment, track maintenance equipment or other similar equipment, shall be taxed in the same manner as that in the supply tank of a motor carrier.

(b) Definitions. — Terms used in this section shall have the same meaning as when used in a comparable context in section eighteen, article fifteen of this chapter.

(c) Determination of average wholesale price.

(1) To simplify determining the average wholesale
price of all gasoline and special fuel, the tax commissioner shall, effective with the period beginning the first day of the month of the effective date of this section and each first day of January, annually, thereafter, determine the average wholesale price of gasoline and special fuel for each annual period, on the basis of sales data gathered for the preceding period of the first day of July through the thirty-first day of October. Notification of the average wholesale price of gasoline and special fuel shall be given by the tax commissioner at least thirty days in advance of each first day of January, annual period, by filing notice of the average wholesale price in the state register, and by such other means as the tax commissioner deems reasonable: Provided, That notice of the average wholesale price of gasoline and special fuel for the first period shall be timely given if filed in the state register on the effective date of this section.

(2) The “average wholesale price” shall mean the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of gasoline or diesel fuel, as determined by the tax commissioner from information furnished by distributors of gasoline or special fuel in this state, or such other information regarding wholesale selling prices as the tax commissioner may gather, or a combination of such information: Provided, That in no event shall the average wholesale price be determined to be less than ninety-seven cents per gallon of gasoline or special fuel.

(3) All actions of the tax commissioner in acquiring data necessary to establish and determine the average wholesale price of gasoline and special fuel, in providing notification of his determination prior to the effective date of any change in rate, and in establishing and determining the average wholesale price of fuel, may be made by the tax commissioner without compliance with the provisions of article three, chapter twenty-nine-a of this code.

(4) In any administrative or court proceeding brought to challenge the average wholesale price of gasoline and special fuel as determined by the tax commissioner, his
determination shall be presumed to be correct and shall not be set aside unless it is clearly erroneous.

(d) Computation of tax due from motor carriers. — Every person who operates or causes to be operated a motor carrier in this state shall pay the tax imposed by this section on the average wholesale price of all gallons of gasoline or special fuel used in the operation of any motor carrier within this state, under the following rules:

1. The total amount of gasoline or special fuel used in the operation of the motor carrier within this state shall be that proportion of the total amount of gasoline and special fuel used in any motor carrier's operations within and without this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

2. A motor carrier shall first determine the gross amount of tax due under this section on the average wholesale value, determined under subsection (c), of all gasoline and special fuel used in the operation of the motor carrier within this state during the preceding quarter, as if all gasoline and special fuel had been purchased outside this state.

3. Next, the taxpayer shall determine the total tax paid under article fifteen of this chapter on all gasoline and special fuel purchased in this state for use in the operation of the motor carrier.

4. The difference between (2) and (3) is the amount of tax due under this article when (2) is greater than (3), or the amount to be refunded or credited to the motor carrier when (3) is greater than (2), which refund or credit shall be allowed in the same manner and under the same conditions as a refund or credit is allowed for the tax imposed by article fourteen-a of this chapter.

(e) Return and payment of tax. — Tax due under this article on the uses or consumption in this state of gasoline or special fuel shall be paid by each taxpayer on or before the twenty-fifth day of January, April, July and October of each year, notwithstanding any provision
of this article to the contrary, by check, bank draft, certified check or money order, payable to the tax commissioner, for the amount of tax due for the preceding quarter. Every taxpayer shall make and file with his remittance, a return showing such information as the tax commissioner may require.

(f) Compliance. — To facilitate ease of administration and compliance by taxpayers, the tax commissioner may require motor carriers liable for the taxes imposed by this article on the use of gasoline or special fuel in the operation of motor carriers within this state, and the tax imposed by article fourteen-a of this chapter on such gallons of fuel, to file a combined return and make a combined payment of the tax due under this article and article fourteen-a of this chapter on such fuel. In order to encourage use of a combined return and the making of a single payment each quarter for both taxes, the due date of the return and tax due under article fourteen-a of this chapter is hereby changed from the last day of January, April, July and October of each calendar year, to the twenty-fifth day of such months, notwithstanding any provisions in article fourteen-a of this chapter to the contrary.

(g) Dedication of tax to highways. — All tax collected under the provisions of this section after deducting the amount of any refunds lawfully paid shall be deposited in the “road fund” in the state treasurer's office, and shall be used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of principal and interest on state bonds issued for highway purposes.

(h) Construction. — The tax imposed by this article on the use of gasoline or special fuel in this state shall not be construed as taxing any gasoline or special fuel which the state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.

(i) Effective date. — The provisions of this section and the amendments to section three of this article took
effect on the first day of April, one thousand nine
hundred eighty-three.

(j) Validation. — Inasmuch as there is currently
litigation challenging the lawfulness of this section in
the situation where a motor carrier purchases gasoline
or special fuel in another state paying to that other state
a sales tax thereon and then consumes that gasoline or
special fuel in its operation of a motor carrier in this
state, without being statutorily allowed a credit for such
sales tax against the tax imposed by this article with
respect to such gallonage of tax paid fuel consumed in
this state; and inasmuch as section ten-a of this article
reestablishes the allowance of such a credit and makes
such allowance effectively retroactive and applicable to
gasoline and special fuel consumed in this state after the
thirty-first day of June, one thousand nine hundred eighty-
five, the purported constitutional infirmity is cured. To
avoid any question about whether this section was in
effect subsequent to the thirty-first day of June, one
thousand nine hundred eighty-five, this section is
reenacted and expressly made retroactive to the first
day of July, one thousand nine hundred eighty-five, and
the tax commissioner shall not refund or credit any tax
previously paid under this section due to a claim that
the tax was not lawfully imposed subsequent to the
thirty-first day of June, one thousand nine hundred eighty-
five.

§11-15A-18. Seller must show sale not at retail;
presumption.

1 The burden of proving that a sale was not taxable
2 shall be upon the seller, unless he, in good faith, takes
3 from the purchaser a certificate signed by and bearing
4 the address of the purchaser setting forth the reason for
5 exemption of the sale from imposition of the tax. To
6 prevent evasion it shall be presumed that all proceeds
7 are subject to the tax until the contrary is clearly
8 established. This certificate shall be substantially in the
9 form prescribed by the tax commissioner.


1 (a) Every retailer required or authorized to collect
taxes imposed by this article and every person using in
this state tangible personal property purchased on or
after the first day of July, one thousand nine hundred
fifty-one, shall keep such records, receipts, invoices, and
other pertinent papers as the tax commissioner shall
require, in such form as the tax commissioner shall
require.

(b) In addition to the tax commissioner's powers set
forth in article ten of this chapter, the tax commissioner
or any of his duly authorized agents is hereby authorized
to examine the books, papers, records and equipment of
any person who either:

(1) Is selling tangible personal property; or
(2) Is liable for the tax imposed by this article, and
to investigate the character of the business of any such
person in order to verify the accuracy of any return
made, or if no return was made by such person, to
ascertain and determine the amount due under the
provisions of this article. Any such books, papers and
records shall be made available within this state for
such examination upon reasonable notice when the tax
commissioner shall deem it advisable and shall so order.
However, where the taxpayer's records must be kept
out-of-state, the taxpayer may upon being notified by the
tax commissioner that an examination is to be made,
elect to do one of the following: (1) Forthwith transport
the required records to a convenient point in West
Virginia and notify the tax commissioner that they are
available; or (2) pay the reasonable traveling expenses
of the tax commissioner's representatives from Charles-
ton, West Virginia, to the out-of-state place where the
records are kept, and return, and reasonable living
expenses of such representatives while engaged in their
examination.

§11-15A-22. Canceling or revoking permits.

Whenever any retailer engaging in business in this
state, or authorized to collect the tax herein imposed
pursuant to section seven of this article, fails to comply
with any of the provisions of this article or any orders,
rules or regulations of the tax commissioner prescribed
and adopted for this article under article ten of this chapter, the tax commissioner may, upon notice and hearing, hereinafter provided, by order, cancel the business registration certificate, if any, issued to such retailer under article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, or if such retailer is a corporation authorized to do business in this state under section forty-nine, article one, chapter thirty-one of said code, may certify to the secretary of state a copy of an order finding that such retailer has failed to comply with certain specified provisions, orders, rules or regulations. The secretary of state shall, upon receipt of such certified copy, revoke the permit authorizing said corporation to do business in this state, and shall issue a new permit only when such corporation shall have obtained from the tax commissioner an order finding that such corporation has complied with its obligations under this article. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why such order should not be made, and he shall be given twenty days' notice of the time, place and purpose of such hearing, which shall be heard as provided in section nine, article ten of this chapter. The tax commissioner shall have the power in his discretion to issue a new business registration certificate after such canceling.
RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 4
(By Mr. Speaker, Mr. Albright)

[Adopted July 20, 1986.]

Rescinding and nullifying the action of the Legislature, at the Regular Session thereof in the year 1985, in the adoption of House Joint Resolution No. 19, Warehouse Freeport Tax Amendment, and withdrawing the same from submission to the voters of the State at the general election to be held in November, 1986.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That, pursuant to and in accordance with the provisions set forth in section one, article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the action of the Legislature, at the Regular Session thereof in the year 1985, in the adoption of House Joint Resolution No. 19, Warehouse Freeport Tax Amendment, is hereby rescinded and nullified; and, be it

Further resolved, That, pursuant to and in accordance with said provisions, the aforesaid House Joint Resolution No. 19 be, and is hereby, withdrawn from submission to the voters at the general election to be held in November, 1986.

SENATE CONCURRENT RESOLUTION 2
(Originating in the Senate Committee on Finance)

[Adopted July 20, 1986]

Providing for the removal of “Amendment No. 5” designated as the “Highway Improvement and Bridge Amendment” from the November 1986 general election ballot.

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 “Amendment No. 5” designated as the “Highway Improvement and Bridge
Amendment" S.J.R. 20 adopted during the 1986 Regular Session, by the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-six be withdrawn from consideration and removed from the ballot in accordance with section one, article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

HOUSE JOINT RESOLUTION 1
(By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of the Executive)
[Adopted July 22, 1986.]

Proposing an amendment to the Constitution of the State of West Virginia, amending article ten thereof by adding a new section, designated section one-c, relating to ad valorem property taxation; exempting certain tangible personal property of inventory and warehouse goods from such tax when such property is in the stream of interstate commerce or in transit through the State and acquires no tax situs in the State; requiring phase in of exemption on graduated percentage basis for each year over a period of five consecutive assessment years; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such amendment."

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-six, which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section one-c, to read as follows:

ARTICLE X. TAXATION AND FINANCE.
§1c. Exemption from ad valorem taxation of certain personal property of inventory and warehouse goods, with phase in to full exemption over five-year period.

1 Notwithstanding any other provisions of this Consti-
tution, tangible personal property which is moving in
interstate commerce through or over the territory of the
State of West Virginia, or which was consigned from a
point of origin outside the State to a warehouse, public
or private, within the State for storage in transit to a
final destination outside the State, whether specified
when transportation begins or afterward, but in any
case specified timely for exempt status determination
purposes, shall not be deemed to have acquired a tax
situs in West Virginia for purposes of ad valorem
taxation and shall be exempt from such taxation, except
as otherwise provided in this section. Such property
shall not be deprived of such exemption because while
in the warehouse the personal property is assembled,
bound, joined, processed, disassembled, divided, cut,
broken in bulk, relabeled, or repackaged for delivery out
of state, unless such activity results in a new or different
product, article, substance or commodity, or one of
different utility. Personal property of inventories of
natural resources shall not be exempt from ad valorem
taxation unless required by paramount federal law.

The exemption allowed by the preceding paragraph
shall be phased in over a period of five consecutive
assessment years, at the rate of one fifth of the assessed
value of the property per assessment year, beginning the
first day of July, one thousand nine hundred eighty-
seven.

Resolved further, That in accordance with the provi-
sions of article eleven, chapter three of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, such proposed amendment is hereby num-
bered "Amendment No. 3" and designated the "Ware-
house Freeport Tax Exemption Amendment" and the
purpose of this proposed amendment is summarized as
follows: "To exempt certain personal property of
inventory and warehouse goods from ad valorem
property tax when such property is in the flow of
interstate commerce or in transit and consignment to a
warehouse, public or private, within the State for
delivery to a destination outside the State, with grad-
uated phase in to full exemption over a five-year period."
HOUSE JOINT RESOLUTION 6
(By Delegates Jordan and Smith)
[Adopted July 23, 1986.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section six, article twelve thereof, relating to the division of the State into school districts; providing that the present districts shall continue until changed by legislative action; describing the method of election for school board members and establishing residency requirements for such board members; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-six, which proposed amendment is that section six, article twelve thereof be amended to read as follows:

ARTICLE XII. EDUCATION.


1 The school districts into which the state is now divided shall continue until changed pursuant to act of the Legislature: Provided, That the school board of any district shall be elected by the voters of the respective district without reference to political party affiliation.

2 No more than two of the members of such board may be residents of the same magisterial district within any school district.

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. 6" and designated as the "School Board Members Amendment" and the purpose of the proposed amendment is summarized as follows: "To provide for the election of school board members and
Proposing an amendment to the Constitution of the State of West Virginia, providing for the collection and levy of an additional consumers sales and service tax in the amount of one percent 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 consumers sales and service tax for the payment of such bonds; providing that no more than one hundred million dollars of such bonds shall be issued in any one year; providing for the competitive bidding of all brokerage fees and legal fees; providing for the retirement of such bonds and the termination of the tax imposed; clarifying the taxing authority of the Legislature; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the general election to be held in the year one thousand nine hundred eighty-six, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is as follows:

HIGHWAY AND BRIDGE IMPROVEMENT AMENDMENT

1 (a) In addition to any other taxing power presently
2 reposing with the Legislature or conferred upon it by
3 this Constitution, the Legislature shall by general law
4 impose a general consumers sales and service tax of the
nature heretofore imposed by general law, at a rate of one percent, which tax shall be subject to such conditions, exceptions and terms as shall be provided by law and shall be in addition to any like tax now or hereafter imposed and shall be paid into 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 of this state.

(b) 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 one hundred million dollars of such aggregate principal amount to be issued or sold in any fiscal year. The purpose of these bonds shall be to construct new highways and new or replacement bridges throughout West Virginia to promote economic development, to facilitate industrial access and to improve the highway network: Provided, That on the first day of every regular legislative session, the Department of Highways, or its successor, shall present to the Legislature a detailed plan, with particular attention to regional transportation and economic needs including specific projects for expenditure of any bond revenues. Such plan shall not be binding upon the Legislature.

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 refunded.

(c) The Legislature shall provide that the additional consumers sales and service tax 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 any such bonds issued under authority of this amendment 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 consum-
ers sales and service tax collected and dedicated to the
state road fund pursuant to this amendment 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.

(d) The additional tax required to be imposed by the
provisions of this amendment shall terminate and expire
when all bonds issued pursuant thereto and the interest
thereon have been retired or discharged in their
entirety. Nothing herein, however, shall be construed so
as to limit the general taxing power of the Legislature.

Further resolved, That in accordance with the provi-
sions of article eleven, chapter three of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, such proposed amendment is hereby num-
bered “Amendment No. 5” or as to be determined by the
Secretary of State, and designated as the “Highway and
Bridge Improvement Amendment” and the purpose of
the proposed amendment is summarized as follows: “To
provide for the levy and collection of an additional
consumers sales and service tax at the rate 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 Virgi-
nia 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 new highways and new and
replacement bridges throughout West Virginia to
promote economic development, facilitate industrial access and to improve the highway network. These bonds shall not exceed the aggregate principal amount of five hundred million dollars and with no more than the principal amount of one hundred million dollars of bonds to be issued in any fiscal year. The consumers sales and service tax 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.”
### 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, 1987

**HOUSE BILLS**

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Second Extraordinary Session, 1986

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- **Raleigh County Recreational Authority**
- **Support, maintenance and operation of the New River Parkway Authority**
- **Including Mercer County as a member of the New River Parkway Authority**

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- **Noncannellability of insurance policy due to**

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- **Commission on Aging**
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- **Department of Corrections**
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- **Office of Community & Industrial Development**
- **Public Employees Insurance Board**
- **Public Service Commission**
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- **Victims of crimes**

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- **Prosecution of crimes**
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- **Letters of credit**
- **Removing limitation**

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- **Public work**
- **Preference in letting contracts**

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